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ASBESTOS HAZARD EMERGENCY RESPONSE ACT OF 1986

September 3, 1986.—Ordered to be printed

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Mr. Stafford, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 2083]

The Committee on Environment and Public Works, to which was referred the bill (S. 2083), having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

CONTENTS

Page
- General Statement 2
- Summary of Bill 4
- Section-By-Section Analysis 5
  - Short Title 5
  - Amendment to Toxic Substances Control Act 5
    - Congressional Findings and Purpose 5
    - Definition of Asbestos; Abatement; and Guidance Document 5
    - Model Contractor Accreditation Program 6
    - State Governor Asbestos Review 7
    - Certification of School Inspection and Abatement 7
    - Inspection; Asbestos Management Plans 8
    - Environmental Protection Agency Response Authority 10
    - Abatement Action 10
    - Public Protection 10
    - Pollution Insurance 10
    - Enforcement Considerations 11
    - Preemption 11
    - Definitions 12
    - Secretary of Defense to Act in Lieu of State Governor 13
    - Overseas Schools of Department of Defense 13
  - Technical and Conforming Amendments 13
  - Authorization 13

71-010 O

S323-6

Page
Asbestos Trust Fund 13
Reservation of Loan Funds 14
Hearings 14
Rollcall Votes 14
Cost of Legislation 14
Evaluation of Regulatory Impact 17
Changes in Existing Law 17

GENERAL STATEMENT

According to the best estimates of the Environmental Protection Agency (EPA), about 31,000 schools in this country incorporate building materials that contain cancer-causing asbestos in a form that easily could be crumbled into dust. As these materials deteriorate or are damaged by accident or design, the asbestos fibers can be released into the air. The microscopic fibers lodge in the deepest recesses of the lung where they cannot be expelled. Some 15,000,000 school children and 1.4 million school employees are potentially exposed to asbestos fibers in this way.

When inhaled, asbestos can cause lung cancer, pleural and peritoneal mesothelioma, and other forms of fatal cancer. At higher exposure levels, it causes asbestosis, a non-cancerous scarring of lung tissue. Though the risk of manifesting these diseases appears to be related to the amount of asbestos exposure, experts agree that there is no known safe level of exposure. There are recorded incidents of cancer arising from brief exposure. Children appear to be at higher risk than adults for a number of reasons. Their lung tissues are young and still growing. They have higher breathing rates. They play nearer the floor and are more likely to handle loose material and stir up fibers that have settled on surfaces. Also, they have a longer life span. Asbestos-induced cancers may develop 20 to 40 years after exposure, so exposure early in life allows a much greater opportunity for diseases to appear.

Asbestos was used in several types of building materials before its use in these products was prohibited by the EPA in the early 1970's. Common asbestos-containing materials in schools and other buildings include pipe and boiler insulation, sprayed-or troweled-on fireproofing and insulation, and acoustical plaster. These forms of asbetos-containing material often are friable—that is, capable of being pulverized or reduced to powder by hand pressure. Water damage, vandalism, or disturbance related to routine maintenance, renovation or repair can cause the asbestos-containing material to fall apart. School children and teachers are exposed to asbestos from damaged materials in classrooms and other general use areas of school buildings. School maintenance workers often are exposed to much higher levels of asbestos during maintenance and repair of asbestos containing materials or when working in crawl spaces, above suspended ceilings, or in other confined areas where asbestos fibers have accumulated.

The Environmental Protection Agency recognized the problem of asbestos in schools in the mid-1970's. In 1978, EPA initiated a Technical Assistance Program to encourage voluntary recognition and remedy of asbestos problems. The Agency sent educational materials and technical information to all school districts and urged school officials to take appropriate preventive and remedial action. Unfortunately, compliance with this voluntary program was poor.

In 1982, the Agency promulgated rules requiring all public and private schools to conduct a one-time inspection for asbestos, keep appropriate records, and notify parents and school employees if friable asbestos was found. EPA did publish technical guidance manuals describing how to recognize asbestos in a hazardous condition and describing different types of abatement actions, including repair, encapsulation, enclosure and removal. However, the inspection rule did not actually require that any action be taken to abate hazardous asbestos, nor did it provide enforceable standards for determining whether immediate abatement was called for.

Audits of this program also have revealed serious problems. Three years after the date by which all schools were to have been inspected fully, the Agency estimates a non-compliance rate of over sixty percent. Many schools simply did not carry out inspections or failed to inspect all areas within school buildings. The most common error was to ignore boiler rooms and other maintenance areas. These are the locations where asbestos is most likely to be found. Also, school officials and other interested parties, such as teachers unions and the Parent/Teachers Association, have complained about the lack of abatement standards. In some cases, school officials ignored or delayed abatement of hazardous asbestos that required immediate attention. In other cases public pressure forced the removal of all asbestos-containing materials from schools, without regard to the condition of the material. Often less expensive interim abatement alternatives such as repair, encapsulation, or enclosure would have been technically acceptable and less expensive in the near term. (Under Clean Air Act rules issues by EPA, all asbestos-containing material must be removed from a building before it is demolished or renovated in such a way that the material is disturbed. Thus, sooner or later all asbestos must be removed.) To make matters worse, removals in some cases were attempted by unqualified persons who exposed themselves and possibly building occupants to unnecessary risks.

Though EPA has not established enforceable standards for abatement of hazardous asbestos, the Agency has published a series of guidance manuals with the help of panels of experts. The guidance manuals discuss how to inspect for asbestos-containing material, how to analyze for the asbestos content of samples of building materials, and the options that are available when asbestos is found to be present. The abatement options are varied, and the choice of a preferred action depends upon factors such as the condition of the asbestos, its location, and present and future activities at that location. In some circumstances, no immediate abatement action is required. It is sufficient for the time being to monitor the condition of the asbestos and inform employees about the dangers of disturbing it. In other cases, repair of damaged asbestos or enclosure of asbestos-containing materials to prevent damage may be appropriate. Sometimes chemical encapsulants are used to penetrate the material and harden to prevent deterioration. In other cases, of course, the asbestos containing material should be removed immediately, a procedure involving special protective clothing for abatement workers and the use of specialized equipment.

The Agency's guidance manuals recommended making these determinations on the basis of the physical condition of the asbestos rather than on measurements of actual concentrations of asbestos fibers in the air. Air monitoring has several technical drawbacks that hinder its usefulness for deciding whether abatement is needed. An air sample can only provide information about the location of the monitor and the time period it is operating. It easily can miss peak air fiber concentration levels resulting from periodic activities that disturb asbestos fibers that have settled out of the air. EPA estimates that peak exposures in school buildings may be 1000 times higher than normal or routine exposures. Also, certain analytical techniques require that air filters be handled in ways that break up the fibers into pieces too small to be seen by some types of microscopes commonly used for analysis. For both these reasons, EPA believes that air monitoring is likely to give "false negative" results and lead to a false sense of security that discourages needed actions to abate risk.

Another Federal response to the problem of asbestos in schools is the Asbestos School Hazard Abatement Act of 1984. This program, enacted by Congress as Title V, of the Education and Economic Security Act, authorized $100 million per year through fiscal year 1990 for asbestos response action grants and interest-free loans to assist schools in cleaning up friable asbestos-containing material. The program is aimed at supporting asbestos cleanup efforts in schools that can demonstrate financial need. To date, over $100 million has been appropriated under this Act.

SUMMARY OF BILL

The bill reported here is designed to remedy the major problems identified in the EPA's present asbestos-in-schools-program. First, it requires the Agency to publish national standards for asbestos inspection, determining when asbestos-containing material is hazardous, and deciding what abatement action to take in response. When asbestos that does not require abatement is found, the standards will call for an operation and maintenance plan based on employee education and periodic reinspection.

Second, the bill calls for State accreditation of asbestos contractors to assure that only competent persons do asbestos work.

The need for these elements—national uniform standards and contractor acreditation—has been stated strongly by all parties, including school officials, parents, teachers, and the manufacturers of the asbestos-containing products.

Third, the bill requires that the standards actually be followed. School districts that responded adequately to the voluntary program or the subsequent inspection rule are not covered by the bill. But those school districts that have not yet taken proper action under these programs are required to inspect for asbestos and, if asbestos is found, to follow through with an asbestos management plan that includes the proper mix of operation and maintenance activities and abatement, depending on the circumstances at the school.

The Act, like other comparable laws, requires that standards be established and followed. It is silent on, and does not address, the question of whether, how, or on what basis those standards might find their way into other proceedings, such as ongoing litigation involving school districts and asbestos product manufacturers. These questions are to be determined by the courts of the various jurisdictions under other existing law. It is not the purpose of the legislation to affect ongoing litigation involving such school districts and asbestos manufacturers.

Section-by-Section Analysis

SHORT TITLE

Section 1 states that this Act may be cited as the Asbestos Hazard Emergency Response Act of 1986.

AMENDMENT TO TOXIC SUBSTANCES CONTROL ACT

Section 2 establishes a new title II, entitled "Asbestos Hazard Emergency Response," in the Toxic Substances Control Act. This new title II contains provisions described below.

CONGRESSIONAL FINDINGS AND PURPOSE

Congressional Findings and Purpose Section 201 states a series of Congressional findings: That the existing Environmental Protection Agency regulatory program related to asbestos in schools lacks standards for asbestos identification and decisions when asbestos is hazardous. As a result, some schools have not taken proper action to abate present hazards, while others may have undertaken action that is inappropriate.

The purposes of the title are to require the establishment of Federal standards for inspecting for asbestos and to require appropriate abatement measures when asbestos in a hazardous condition is found.

DEFINITION OF ASBESTOS; ABATEMENT; AND GUIDANCE DOCUMENT

Section 202 contains definitions of key terms. It also requires the Environmental Protection Agency to publish a series of standards upon which the program is based. These include standards for inspecting for asbestos and standards for determinating when asbestos-containing material is hazardous. The regulations must require abatement of hazardous asbestos when it is found. Standards will define the types of abatement that are appropriate in different circumstances and the extent of abatement necessary. At a minimum, asbestos containing material will be considered hazardous if it is friable, and if it is either in a deteriorated condition or is readily accessible, in circumstances that present a reasonable likelihood of human exposure.

In determining that asbestos containing material presents a reasonable likelihood of exposure, the Administrator is to consider the physical circumstances of the material, including its condition or location, or both. It is not necessary to establish this likelihood by air monitoring.

This section also requires the publication of regulations requiring abatement in conformance with the standards described above, as well as standards for performing asbestos abatement work. These standards will determine when abatement is complete, and they will provide for protection of workers and building occupants during all phase of activity, including any long term operation and maintenance activity.

Asbestos which is found not to be hazardous, as well as hazardous asbestos that is abated by repair, enclosure or encapsulation, must be covered by an operation and maintenance plan. This plan must provide for labelling and periodic reinspection of the asbestos-containing material and for education and protection of employees who may come into contact with the asbestos.

Finally, the EPA regulations must include standards for transportation and disposal of asbestos-containing debris, including requirements related to loading and unloading to assure the physical integrity of containers of asbestos-contaminated debris.

Recognizing that the Agency often fails to meet statutory deadlines for the promulgation of regulations, this section also establishes standards that will apply from the deadline for publication of standards until the required standards are published. Subsection (c) describes hazardous asbestos in terms its degree of physical deterioration. Subsection (d) requires abatement in accordance with the most recent version of EPA's technical guidance manual. It also requires that interior asbestos ambient concentration not exceed ambient exterior concentration after abatement is completed. In the absence of reliable measurements of ambient exterior concentrations, this subsection provides fiber concentration levels to be used for purposes of the required comparison. These fiber concentrations reflect those typically found in urban environments.

Subsection (e) requires that if EPA fails to publish regulations regarding disposal of asbestos, disposal will be in accordance with the latest version of disposal guidance.

MODEL CONTRACTOR ACCREDITATION PROGRAM

Section 203 requires EPA to develop a model contractor accreditation program for use by the States. The program must include training in a number of areas related to asbestos identification, use of protective equipment, and abatement techniques. It is important to recognize that the term "asbestos contractor" is defined very broadly. It includes persons who inspect for asbestos, develop asbestos management plans, including operation and maintenance plans, write specifications for asbestos work and perform asbestos abatement activities. Thus, this term would include, for example, salaried employees who perform these functions even though they are not contractors in the usual sense. The purpose of this broad definition and the accreditation requirement is to assure that all persons who must make technical decisions regarding asbestos and who work around asbestos are properly trained.

Following adoption of the model contractor accreditation plan, each state is to adopt a plan as least as stringent as the model. The Secretary of Defense shall adopt such a plan for use by the Armed Forces.

Subsection (c) provides that a person doing asbestos work in a State that has not adopted an accreditation plan must be accredited in another State before carrying out any asbestos work.

Subsection (d) authorizes the Administrator to designate training courses that are equivalent to the contractor accreditation program required by this section. A person who has completed and achieved a passing grade in such a designated course will be considered accredited for the purposes of this title until a date one year after the date on which the State in which the person is employed establishes an accreditation program. This provision is needed to assure the continued availability of persons already properly trained to do asbestos work, while providing ample time for individuals to become State-accredited once a State program is established. The Administrator may designate training programs operated by States, private entities, associations, or universities, at the Administrator's discretion.

Subsection (e) provides that schools applying for aid under the Asbestos School Hazard Abatement Act of 1984 are not eligible for such aid if they use any person for asbestos work who is not accredited as described above. This requirement takes affect with regard to any financial assistance awarded more than one year after the date of enactment of this title.

STATE GOVERNOR ASBESTOS REVIEW

Section 204 requires State Governors to establish administrative procedures for carrying out duties assigned under sections 205 and 206, described below.

CERTIFICATION OF SCHOOL INSPECTION AND ABATEMENT

Section 205 requires that, within 12 months of enactment, each local education agency submit a written certification to the Governor with respect to previous asbestos inspections and abatement in schools under its authority. The certification must cover each school building and specify whether a previous inspection included the boiler room. The boiler room is mentioned specifically in the bill because program audits have shown that many schools failed to include boiler rooms in a previous inspection required by EPA rules. If an inspection was conducted, the certification must include the dates of inspection, information about each inspector (including qualifications), a description of the areas inspected and results of the inspection, and information about the laboratory that analyzed bulk samples of building material or air samples for asbestos. The certification also must describe any abatement actions taken, including the location and nature of the action and information about the person performing the abatement action, including his or her qualifications.

Subsection (b) requires this certification to be available in the offices of the local education agency for inspection by the public.

The purpose of the certification requirement is to document asbestos inspection and abatement that took place prior to enactment of this title. This step is necessary to avoid duplication of effort and unnecessary expense that would result from needless reinspection of areas of buildings that already have been inspected adequately and found to contain no asbestos, or areas from which all asbestos has been removed. In fact, the definition of "covered local education agency" in section 213 is written to exclude from the requirements of this Act those schools which the local education agency certifies to have been found to contain no asbestos or from which all asbestos has been removed. Similarly, the asbestos inspection required by section 206 excludes areas of buildings known to be asbestos-free. Of course, this subsection does not preclude the Administrator from requiring reinspection or determining circumstances under which the required certification properly can be executed. For example, the Administrator may determine that certain inspection and analytical techniques used in some schools are unreliable and that use of such techniques does not permit a determination that a building contains no asbestos.

The certification requirement described above calls for submission of information related to the qualifications of persons inspecting for and abating asbestos as well as of laboratories performing analyses to detect asbestos fibers. The local education agency, the Governor and the Administrator should consider these qualifications as well in determining whether to reinspect for asbestos because of the possibility that asbestos unwittingly may have been undetected or incompletely abated by unqualified persons.

INSPECTION; ASBESTOS MANAGEMENT PLANS

Section 206 of the bill contains the key requirements related to inspection and development of asbestos management plans. It requires that, within 180 days after the deadline for publication of the regulations and standards required by section 202, each local education agency must inspect for asbestos in all areas of each school building not certified under section 205 to be asbestos-free. This inspection would include re-inspection of areas known from a previous inspection to contain asbestos, but from which the asbestos has not been removed. The purpose of this reinspection is to ascertain the present condition of asbestos-containing material so that an asbestos management plan can be based on up-to-date information.

Subsection (b) requires local education agencies, within 12 months of the deadline for EPA publication of standards under section 202, to develop an asbestos management plan covering all asbestos-containing material in schools under their authority. The asbestos management plan must comply with the EPA standards. It must include plans and commitments for abatement of asbestos-containing material found to be hazardous and an operation and maintenance plan for asbestos-containing material found not to be hazardous.

Subsection (b) also prescribes the required content of a management plan, which include a description of the results of the asbestos inspection, measures to be taken to abate any hazardous asbestos found, information regarding procedures used to select persons who performed the inspection and who will perform any needed abatement projects, a description of non-hazardous asbestos-containing material in the schools, and an operation and maintenance plan covering such material.

A particular school may be omitted from the asbestos management plan if the local education agency determines that all asbestos-containing material has been removed from it. In order to avoid delay, an asbestos management plan can be submitted in stages, with each submission covering only a portion of the schools under the authority of the local education agency.

Each plan must contain a statement signed by an accredited asbestos contractor that he or she either prepared or assisted in the development of the plan, or reviewed the plan, and that the plan complies with current regulation and standards under section 202 and other applicable provisions of law. The person signing this statement need not, of course, be a person who will be involved in any subsequent projects performed pursuant to the plan.

The completed management plan must be submitted to the Governor, and parents and school employees must be notified of the existence of the plan and of their right to comment to the Governor about it. Subsection (c) authorizes a Governor to disapprove a plan on the basis of its unsuitability to the problem identified, its failure to assure the use of accredited contractors, non-conformance with applicable regulations, or unreasonableness and untimeliness of any abatement schedule in the plan. If the Governor disapproves a plan, the local education agency must revise the plan accordingly.

This provision allows a Governor to disapprove a plan, but it does not require the Governor's approval before a plan may be implemented. In fact, subsection (d) requires the local education agency to implement the plan if the Governor has not disapproved it within 60 days of submittal. The local education agency must implement the plan within 12 months after its submission to the Governor and must certify in writing to the Governor that the plan has been implemented.

Subsection (e) requires that the management plan be available for inspection by the public in the administrative offices of the local education agency.

Subsection (f) authorizes the Administrator of EPA to waive the requirements of section 204 (requiring the Governor of each State to establish, within 180 days, administrative procedures to carry out portions of this Act) and section 206 (mandatory inspection, development and implementation of management plans after enactment of this Act) if the State is implementing a program that contains requirements that are substantially equivalent to those of sections 204 and 206. This amendment does not authorize the Administrator to waive the substantive standards of section 202.

This provision is needed because a few Sates have active, aggressive inspection and abatement programs already in place. Although all States must, at a minimum, satisfy the substantive federal standards that are called for in this bill, it is not likely that such standards will exist for several months. Those few States that have adequate programs should be encouraged to go forward without having to fear that they will be forced to reinvent the wheel and, for example, reinspect every school building that was adequately inspected before EPA's standards were promulgated.

ENVIRONMENTAL PROTECTION AGENCY RESPONSE AUTHORITY

Section 207 authorizes the Administrator of the Environmental Protection Agency and the Governor of a State to act to abate hazardous asbestos in a school building when either official determines that the presence of the asbestos may present an imminent and substantial endangerment to human health and the local education agency is not taking sufficient action, consistent with the standards under section 202, to abate the hazardous asbestos.

Subsection (b) provides the Administrator may seek reimbursement from a local education agency or any other potentially responsible party in a court of the United States for all costs of abatement incurred by the United States Government under this section. Nothing in this section creates a cause of action or in any other way increases or diminishes the liability of any person under any other law.

When the Administrator seeks reimbursement as described above from a local education agency, the action must be filed in the judicial district in which the abatement action occurred.

ABATEMENT ACTION

Section 208 provides additional abatement authority. When the Administrator or Governor determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of the presence of asbestos in a school building, the Administrator may request the Attorney General to act, or the Governor may act, to secure relief to abate the danger. Authority to grant relief, including injunctive relief, lies with the United States district court in the district in which the threat occurs.

PUBLIC PROTECTION

Section 209 provides that no State or local education agency may discriminate against any employee for poviding information related to a potential violation of this title. Any person who believes he or she has been fired or otherwise discriminated against in violation of this requirement may apply to the Secretary of Labor within 90 days for a review in accordance with section 11(c) of the Occupational Safety and Health Act.

POLLUTION INSURANCE

Section 210 authorizes the creation of risk retention programs for insuring liabilty for injuries arising from the release of asbestos. The effect of this amendment would be to allow groups of individuals or firms to share liability for damages caused by asbestos release. The authority to establish pollution liability risk retention groups authorized by this section is virtually identical to the authority to insure product liability risks granted under the Product Liability Risk Retention Act of 1981 and to an amendment to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) recently adopted by House and Senate conferees on the reauthorization of that Act.

This section authorizes a pollution liability risk retention group to sell only pollution liability insurance and offer that insurance only to its own members. It may not sell insurance to the public and it may not offer automoblie, life or health insurance either to its own members or the public. Thus, the insurance authority granted under this section is limited to insuring the pollution liability risks of firms that join together to establish a risk retention group.

In addition to authorizing risk retention groups, the amendment also authorizes establishing pollution liability "purchasing groups." A purchasing group is a group of firms that join together to purchase pollution liability insurance on a group basis. If their experience, safety standards, or technology demonstrate that they are a preferred risk, the group may be able to obtain pollution liability insurance coverage on a favorable basis. This section provides that a pollution liability purchasing group is exempt from all regulations which prohibit or restrict the sale of insurance on a group basis.

Finally, pollution liability is defined as "liability for injuries arising from the release of asbestos". This definition should be broadly construed to cover all liability arising out of release of asbestos. This provision authorizes coverage for sudden and accidental, as well as gradual pollution claims.

Of course, if private insurance is available or the commerical insurance market revives, individuals would still be free to purchase that coverage, and many undoubtedly would choose to do so. But, if commercial insurance is not available, they would be able to band together to provide their own pollution liability insurance coverage.

These provisions are needed because the general unavailability of liability insurance is hampering the activities of qualified asbestos inspection and abatement companies and impeding projects that are needed to protect the health of school children and employees.

ENFORCEMENT CONSIDERATIONS

Section 211 directs the Administrator to consider certain factors in determining the amount of civil penalty to be assessed against a local education agency under section 16 of TSCA for violation of any of the provisions of this title. These include the significance of the violation, the culpability of the violator, ability to pay the penalty, and ability of the violator to continue to provide educational services to the community.

PREEMPTION

Section 212(a) provides that this title does not preempt a State from imposing any additional liability or requirements with respect to asbestos or asbestos-containing material.

Subsection (b) clarifies that nothing in this title, or any standard, regulation or requirement promulgated under this title, shall be construed to preclude any court from awarding costs and damages associated with the abatement of asbestos-containing material at any time prior to the actual date on which such material is removed.

As described above, the Environmental Protection Agency under this title will promulgate regulations for the abatement of hazardous asbestos-containing material and for the maintenance of other asbestos in school buildings. These regulations may provide that the asbestos be left in place for a time, as an adequate operations and maintenance program or abatement that involves encapsulation, enclosure, or repair rather than removal may minimize the risk posed to building occupants. Nevertheless, at some point in the future the asbestos will need to be removed and the owner of the building will bear the costs of removal.

Many building owners have sought to recover the costs of removal and other abatement actions from the manufacturer of the asbestos product or from the contractor who installed the material at the site. These cost recovery actions are subject to statutes of limitations at the State level. Section 212(b) is a "savings clause" to assure that the regulations for abatement or operations and maintenance promulgated by EPA do not interfere with the right of a building owner to bring suit to recover the entire cost of asbestos abatement including the full cost of removal which may occur at some point in the future.

The "savings clause" does not preempt State statutes of limitations, nor does it create any Federal cause of action. Rather the provision provides that if a building owner should seek to recover the full cost of operations and maintenance or abatement, including the cost of removal, before such costs are actually incurred, a court should not interpret or construe the provisions of this title, or regulations promulgated pursuant to this title, as indicating that removal costs or any other reasonable costs or damages associated with operations and maintenance or abatement would be inappropriate or unnecessary.

DEFINITIONS

Section 213 contains definitions, the most important of which is the definition of "local education agency." The definition of "local education agency" includes three parts. First, it includes local education agencies as defined in section 198 of the Elementary and Secondary Education Act of 1965. Second, it includes the owner of any non-profit elementary or secondary school. The term "owner" is used to assure that the requirement of this title apply to persons who actually own the school buildings. These persons may be different from the entity that governs operation of the school. Third, the definition includes the governing authority of impact aid schools operated for children of members of the Armed Forces. This part of the definition assures that equal protection is applied to children of members of the Armed Forces.

As described earlier, this section also contains a definition of "covered local education agency." This term includes a local education agency which has under its authority schools which have not been inspected for asbestos or for which it is not able to certify that an inspection adequately covered all areas of school buildings, as well as schools which were inspected and are known to contain asbestos-containing materials.

SECRETARY OF DEFENSE TO ACT IN LIEU OF STATE GOVERNOR

Section 214 states that the various duties assigned to Governors of States shall be construed as having been imposed on the Secretary of Defense with respect to impact aid schools.

OVERSEAS SCHOOLS OF DEPARTMENT OF DEFENSE

Section 215 applies to buildings used by the Department of Defense as overseas schools for dependents of employees of the Department of Defense. It requires the Secretary of Defense, to the extent feasible and consistent with the national security, to perform the various inspection and abatement functions required by this title in a manner comparable to that required of local education agencies. The Secretary of Defense and the Administrator shall issue such regulations as are necessary to carry out the provisions of this section.

The foregoing discussion describes the provisions of the new title II of the Toxic Substances Control Act that would be established by this bill. In addition to these provisions, the bill makes a number of other amendments to TSCA and to the Asbestos School Hazard Abatement Act (ASHAA), as described below.

TECHNICAL AND CONFORMING AMENDMENTS

Section 3 of the bill contains various technical and conforming amendments to TSCA.

AUTHORIZATION

Section 4 amends ASHAA to authorize an appropriation of $25 million out of the Asbestos Trust Fund created by section 5 for each of fiscal years 1987, 1988, 1989, and 1990.

ASBESTOS TRUST FUND

Section 5 establishes the Asbestos Trust Fund referred to above. The Trust Fund will include funds equivalent to funds repaid to the Treasury as repayment of loans made under section 505 of ASHAA and any amounts recovered by the United States Government under the cost recovery provision of section 207(b) of this title. The Trust Fund is to be managed by the Secretary of the Treasury, who may invest funds not needed to meet current withdrawals in interest-bearing obligations of the United States.

The Trust Fund may be used only for purposes of carrying out the ASHAA assistance program.

Subsection (e) authorizes an appropriation to the Trust Fund, as repayable advances of $25 million for each of fiscal years 1987, 1988, 1989, and 1990. These advances are to be repaid to the general fund of the Treasury with interest determined by the Secretary of the Treasury.

These amendments made by this section shall take effect on January 1, 1987.

RESERVATION OF LOAN FUNDS

Section 6 of the bill amends ASHAA to provide that, for fiscal years 1987 and 1988, ten percent of funds appropriated under ASHAA or $10 million, whichever is less, will be reserved for financial assistance grants to States or local education agencies. These grants, which are available to both public and private school districts, are to defray the expenses associated with carrying out the provisions of sections 205 and 206 of this title. The funds are to be reserved from funds otherwise used to provide loans under ASHAA. EPA distributes 50 percent of the ASHAA funds for loans to local education agencies and 50 percent for grants. The amendment ensures that the set-aside will not reduce the amount of funds available for ASHAA grants to financially needy school districts.

HEARINGS

The full Committee held a hearing on July 12, 1985 on the status of the Environmental Protection Agency's efforts to control asbestos in schools and other public buildings. This hearing included oversight of the Asbestos School Hazard Abatement Act. The Subcommittee on Toxic Substances and Environmental Oversight held a hearing on S. 2083 and S. 2300 on May 15, 1986. S. 2300 is a related bill involving regulation of hazardous asbestos-containing material in buildings other than schools. The subcommittee held a mark-up session on S. 2083 on June 19, 1986. The full Committee marked up S. 2083 on August 12 and voted to order the bill reported.

ROLLCALL VOTES

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

During the Committee's consideration of this bill, one rollcall vote was taken. The Committee voted 15–0 to report the bill favorably to the Senate. Voting in the affirmative to report S. 2083 to the Senate were Senators Abdnor, Baucus, Bentsen, Burdick, Chafee, Domenici, Durenberger, Hart, Humphrey, Lautenberg, Mitchell, Moynihan, Simpson, Stafford, and Symms.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires each bill to contain a statement of the cost of such bill by the Congressional Budget Office. That report follows:

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 3, 1986.

Hon. Robert T. Stafford,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 2083, the Asbestos Hazard Emergency Response Act of 1986.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

Edward Gramlich
(For Rudolph G. Penner, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2083.

2. Bill title: Asbestos Hazard Emergency Response Act of 1986.

3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, August 12, 1986.

4. Bill purpose: S. 2083 would amend the Toxic Substances Control Act and the Asbestos School Hazard Abatement Act of 1984 to expand current federal and local responsibilities relating to asbestos hazards. The bill would direct the Environmental Protection Agency (EPA) to promulgate regulations for local school hazard abatement activities, including facility inspection, implemention of response actions, and periodic reinspection. The EPA would also be required to develop a model contractor accreditation program for states.

Section 5 of the bill would create the Asbestos Trust Fund in the U.S. Treasury. Amounts received from the repayment of loans made under the Asbestos School Hazard Abatement Act of 1984 would be transferred to the new fund, which would also receive a $25 million advance from the general fund for each of the fiscal years 1987 through 1990. The bill would authorize appropriations from the fund of a like amount in each of those years. These funds would be in addition to any funds authorized for appropriation under the 1984 act ($100 million a year through 1990) and would be used to finance federal and local abatement efforts required by the bill.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1987	1988	1989	1990	1991
Estimated authorization level	29	28	27	26	
Estimated outlays	16	26	22	27	21

Note: The costs of this bill fall within budget function 300.

Basis of Estimate:

For purposes of this estimate, CBO has assumed that S. 2083 will be enacted prior to the beginning of fiscal year 1987 and that the full amounts authorized will be appropriated for each fiscal year. Additional authorization levels have been estimated for EPA regulatory activities, including the promulgation of regulations under Title 2 and annual compliance monitoring. These costs are estimated to be about $4 million in 1987 and $3 million to $4 million annually in subsequent years.

Also, beginning in fiscal year 1989 the authorization level has been reduced to account for repayments on loans made under the bill. For the purposes of this estimate, CBO has assumed that these repayments would reflect the same terms as those made under the 1984 act—repayments over 18 years, without interest, beginning two years after award. First year (1989) repayments are expected to be less than $1 million, growing to about $3 million by 1991.

Outlays for loans, grants, and administrative expenses have been estimated on the basis of historical spending patterns and information obtained from the EPA. Spending levels have been estimated assuming the same proportional split between loans and grants as for the current programs for fiscal years 1989 through 1991. For fiscal years 1987 and 1988, this split has been adjusted to account for Section 6, which would require that a maximum of $10 million a year be removed from the loan portion and used for grants to carry out the certification and management plan program. The effect to Section 6 is to increase outlays by about $5 million in 1987 and decrease them in later years, because of differences in spending rates between loans and grants.

6. Estimated cost to State and local governments: S. 2083 would direct the EPA to impose stringent new requirements on local school authorities in their efforts to abate asbestos hazards. The bill would provide an additional $25 million a year to the schools to help them in carrying out their programs. These funds, which would be distributed on the basis of financial need, would supplement appropriations authorized under the 1984 act.

In addition to new local requirements, the bill would also expand the states' duties. As under current law, the states would continue to act in a middle-man capacity, collecting data and submissions from school authorities and conveying them to the EPA. In addition, the states would be required to review school management plans and establish contractor accreditation programs. The bill would permit a maximum of 10 percent or $10 million of any appropriations under the amended 1984 Act to be used for the purposes of providing grants to state and local governments for these purposes.

At present, CBO has not completed its analysis of these requirements on state and local government budgets. This estimate will be submitted separately at a later date.

7. Estimate comparison: None.

8. Previous CBO estimate: On August 1, 1986, CBO prepared a cost estimate for H.R. 5073, as ordered reported by the House Committee on Energy and Commerce on July 29, 1986. This estimate is identical to our earlier one, except for changes made to reflect the

impact of Section 6, as described above, and a smaller estimate of EPA regulatory costs.

9. Estimate prepared by: Deb Reis.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

EVALUATION OF REGULATORY IMPACT

In compliance with the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has evaluated the regulatory impact of the legislation.

This bill does not expand significantly the number or classes of entities subject to regulation under the Environmental Protection Agency's current program to identify hazardous asbestos in schools. It does extend the present regulatory regime to require targeted reinspection of certain schools and to require that appropriate actions be taken to manage asbestos that is found, including abatement of hazardous asbestos.

The Committee has made an effort to avoid redundancy in the reinspection requirements by allowing schools that already have determined adequately that no asbestos is present to certify that result and therefore not be subject to reinspection requirements.

CHANGES IN EXISTING LAW

In compliance with Section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman:

TOXIC SUBSTANCES CONTOL ACT

(Public Law 94-469)

TITLE I—CONTROL OF TOXIC SUBSTANCES

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the "Toxic Substances Control Act".

TABLE OF CONTENTS

TITLE I—CONTROL OF TOXIC SUBSTANCES

Sec. 1. Short title and table of contents.
Sec. 2. Findings, policy, and intent.
Sec. 3. Definitions.
Sec. 4. Testing of chemical substances and mixtures.
Sec. 5. Manufacturing and processing notices.
Sec. 6. Regulation of hazardous chemical substances and mixtures.
Sec. 7. Imminent hazards.
Sec. 8. Reporting and retention of information.
Sec. 9. Relationship to other Federal laws.
Sec. 10. Research, development, collection,dissemination, and utilization of data.
Sec. 11. Inspections and subpoenas.
Sec. 12. Exports.
Sec. 13. Entry into customs territory of the United States.
Sec. 14. Disclosure of data.
Sec. 15. Prohibited acts.
Sec. 16. Penalties.
Sec. 17. Specific enforcement and seizure.

Sec. 18. Preemption.
Sec. 19. Judicial review.
Sec. 20. Citizens' civil actions.
Sec. 21. Citizens' petitions.
Sec. 22. National defense waiver.
Sec. 23. Employee protection.
Sec. 24. Employment effects.
Sec. 25. Studies.
Sec. 26. Administration of the Act.
Sec. 27. Development and evaluation of test methods.
Sec. 28. State programs.
Sec. 29. Authorization for appropriations.
Sec. 30. Annual report.
Sec. 31. Effective date.

TITLE II—ASBESTOS HAZARD EMERGENCY RESPONSE

Sec. 201. Congressional findings and purpose.
Sec. 202. Definition of asbestos, abatement, and guidance.
Sec. 203. Model contractor accreditation plan.
Sec. 204. State Governor asbestos review.
Sec. 205. Certification of school inspection and abatement.
Sec. 206. Inspection; asbestos management plans.
Sec. 207. Environmental Protection Agency response authority.
Sec. 208. Abatement action.
Sec. 209. Public protection.
Sec. 210. Pollution insurance.
Sec. 211. Enforcement considerations.
Sec. 212. Preemption.
Sec. 213. Definitions.
Sec. 214. Secretary of Defense to act in lieu of State governor.
Sec. 215. Overseas schools of Department of Defense.

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SEC. 15. PROHIBITED ACTS.

It shall be unlawful for any person to—

(1) fail or refuse to comply with (A) any rule promulgated or order issued under section 4, (B) any requirement prescribed by section 5 or 6, **[**or**]** (C) any rule promulgated or order issued under section 5 or 6**[**;**]**, *or (D) any requirement established by title II or any rule promulgated or order issued under title II;*

* * * * * * *

TITLE II—ASBESTOS HAZARD EMERGENCY RESPONSE

SEC. 201. CONGRESSIONAL FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds the following:

(1) The Environmental Protection Agency's rule on inspection and notification of asbestos hazards has neither standards for the proper identification of asbestos and abatement of friable asbestos-containing material, nor a requirement that friable asbestos-containing material be abated in a safe and complete manner once it is discovered.

(2) There is no uniform program for accrediting persons involved in asbestos identification and abatement, nor are local education agencies required to use accredited contractors for asbestos work.

(3) As a result, some schools have taken no action at all to abate hazardous asbestos while others have undertaken expensive abatement projects with no regulatory guidance from the

Environmental Protection Agency as to whether the actions are necessary, adequate, or safe. Thus, the danger of exposure to asbestos continues to exist in many schools, and some exposure actually may have increased due to the lack of Federal standards for asbestos abatement and the lack of requirements that competent contractors be used to perform asbestos abatement.

(b) Purposes.—The purposes of this title are—

(1) to provide for the establishment of Federal regulations which require inspection for asbestos and the abatement of hazardous asbestos-containing material in the Nation's schools in safe and complete manner;

(2) to establish standards for the development of operation and maintenance plans to prevent exposure to asbestos remaining in a school building after abatement; and

(3) to mandate safe and complete periodic reinspection of school buildings following abatement.

SEC. 202. DEFINITION OF ASBESTOS; ABATEMENT; AND GUIDANCE DOCUMENT.

(a) In General.—For purposes of this title, the term—

(1) "asbestos" means asbestiform varieties of—

- *(A) chrysotile (serpentine),*
- *(B) crocidolite (riebeckite),*
- *(C) amosite (cummingtonite-grunerite),*
- *(D) anthophyllite,*
- *(E) tremolite, or*
- *(F) actinolite;*

(2) "asbestos-containing material" means any material which contains more than 1 percent asbestos by weight;

(3) "friable asbestos-containing material" means any asbestos-containing material applied on ceilings, walls, structural members, piping, duct work, or any other part of a building which when dry may be crumbled, pulverized, or reduced to powder by hand pressure;

(4) "abatement" means enclosure, encapsulation, repair or removal of asbestos-containing material; and

(5) "accredited asbestos contractor" means a person, accredited pursuant to the provisions of section 203, who inspects for asbestos-containing material, develops asbestos management plans, or performs asbestos abatement activities.

(b) EPA Regulations on Identification and Abatement of Asbestos.—Within 12 calendar months after the date of the enactment of this title, the Administrator shall promulgate the following:

(1) Regulations which prescribe procedures, including the use of trained personnel, for determining whether asbestos-containing material are present in a school building.

(2) Regulations which prescribe standards for the circumstances under which the presence of asbestos-containing material in a school building shall be considered hazardous, describing different types of abatement, and defining the circumstances under which different types of abatement are required, including the extent of abatement necessary. In any standard

under this paragraph, asbestos-containing material shall be considered hazardous if, at a minimum, it is friable and is—

(A) damaged, deteriorated or delaminated; or

(B) readily accessible to building occupants including service and maintenance personnel, in the course of their normal activities;

in circumstances that present a reasonable likelihood of exposure to asbestos fibers.

(3) Regulations which mandate abatement, in accordance with standards prescribed under paragraph (4), or hazardous asbestos-containing material found in any school building, as determined in accordance with standards prescribed under paragraphs (1) and (2).

(4) Regulations which prescribe standards for performance of asbestos abatement activities in school buildings and for determination of when the hazard has been abated. Such regulations shall include standards for protection for both workers and building occupants, for the following phases of abatement activity:

(A) Inspection.

(B) Abatement.

(C) Post-abatement, including any long term operation and maintenance activity.

(5) Regulations which prescribe standards for the development and execution of an operation and maintenance plan with respect to asbestos-containing material which is not removed from a school building. Such plan shall include—

(A) an identification of the location of asbestos-containing material in the school building;

(B) provisions for surveillance and periodic reinspection of such asbestos-containing material;

(C) provisions for education of school employees, including school service and maintenance personnel, about the location of and safety procedures with respect to such asbestos-containing material; and

(D) provisions for identifying with a warning label any friable asbestos-containing material that is located in areas not normally frequented by students and which might be damaged by the activities of persons in such areas. The warning label shall read, in print which is readily visible because of large size or bright color, as follows: "CAUTION: ASBESTOS-CONTAINING MATERIAL. BREATHING ASBESTOS DUST MAY CAUSE CANCER. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT" (or words to that effect).

(6) Regulations which prescribe such standards for transportation and disposal of waste asbestos-containing material as may be necessary to protect human health and the environment. Such regulations shall include such provisions related to the manner in which transportation vehicles are loaded and unloaded as will assure the physical integrity of containers of asbestos-containing waste materials.

(c) HAZARDOUS ASBESTOS STANDARD IF EPA FAILS TO PROMULGATE REGULATIONS.—If the Administrator fails to promulgate regu-

lations under subsections (b) (1) and (2) within the prescribed period, any asbestos-containing material which exists in the school building shall be considered hazardous if the asbestos-containing material is visibly damaged, with portions of the material dislodged, missing, cracked, deteriorated, showing evidence of water damage, or flaking, in any area in the school building where there is a potential for human exposure, including an air plenum. Such standards shall be effective until such time as the Administrator promulgates different standards under regulations under subsections (b) (1) and (2).

(d) ABATEMENT IF EPA FAILS TO PROMULGATE REGULATIONS.—If the Administrator fails to promulgate regulations under subsections (b) (3) and (4) within the prescribed period, and asbestos-containing material which is hazardous under the standard described in subsection (c) exists in a school building, the local educational agency with jurisdiction over the school building shall abate such asbestos-containing material in accordance with the most recent version of the Environmental Protection Agency's "Guidance for Controlling Asbestos-Containing Materials in Buildings" (or any successor to such document). The ambient interior concentration of asbestos fibers after the completion of abatement shall not exceed the ambient exterior concentration, discounting any contribution from any local stationary source. In the absence of reliable measurements, the exterior ambient concentration shall be deemed to be less than 0.003 fibers per cubic centimeter if a scanning electron microscope is used to determine whether the standard has been met, and less than 0.005 fibers per cubic centimeter if a transmission electron microscope is used to determine whether the standard has been met.

(e) TRANSPORTATION AND DISPOSAL STANDARDS IF EPA FAILS TO PROMULGATE REGULATIONS.—If the Administrator fails to promulgate regulations under subsection (b)(6) within the prescribed period, any asbetos which is abated within a local educational agency shall be transported and disposed of in accordance with the most recent version of the Environmental Protection Agency's "Asbestos Waste Management Guidance" (or any successor to such document).

SEC. 203. MODEL CONTRACTOR ACCREDITATION PLAN.

(a) MODEL PLAN.—

(1) PERSONS TO BE ACCREDITED.—Within 12 calender months after the date of the enactment of this title, the Administrator shall develop a model accreditation plan for States to give accreditation to persons in the following 3 categories:

(A) Persons who inspect for asbestos in schools within a covered local educational agency.

(B) Persons who prepare management plans for such schools.

(C) Persons who carry out abatement of asbestos in such schools.

(2) PLAN REQUIREMENTS.—The plan shall include a requirement that any person in the categories listed in the preceding sentence achieve a passing grade on an examination and participate in contining education to stay informed about current asbestos inspection and abatement technology. The examination shall demonstrate the knowledge of the person, in areas that the Administrator prescribes in regulations as necessary and ap-

propriate in each of the categories. Such regulations may include requirements for knowledge in the following areas:

(A) Recognition of asbestos and its physical characteristics.

(B) Health hazards of asbestos and the relationship between asbestos exposure and disease.

(C) Assessing the risk of asbestos exposure through a knowledge of percentage weight of asbestos, friability, age deterioration, location and accessibility of materials, and advantages and disadvantages of dry and wet methods of abatement.

(D) Respirators and their use, care, selection, degree of protection afforded, fitting, testing, and maintenance and cleaning procedures.

(E) Appropriate work practices and control methods, including the use of high efficiency particle absolute vacuums, use of amended water and removal encapsulants, and principles of negative air pressure equipment use and procedures.

(F) Preparing a work area for asbestos work, including isolating work areas to prevent bystander or public exposure, decontamination procedures, and procedures for dismantling work areas after completion of work.

(G) Establishing emergency procedures to respond to sudden releases.

(H) Air monitoring requirements and procedures.

(I) Medical surveillance program requirements.

(J) Proper job-specific work practices, including work area preparation, decontamination, emergency procedures, and waste disposal procedures.

(K) Housekeeping and personal hygiene practices, including the necessity of showers, and procedures to prevent asbestos exposure to an employee's family.

(b) STATE ADOPTION OF PLAN.—Following the development by the Administrator of a model contractor accreditation plan under subsection (a), each State shall adopt a contractor accreditation plan at least as stringent as that model. In the case of schools operated, pursuant to section 6 of the Act of September 30, 1950 (Public Law 874, 81st Congress) relating to impact aid for children of members of the Armed Forces, the Secretary of Defense shall adopt a contractor accreditation plan at least as stringent as that model.

(c) CONTRACTOR IN STATE WHICH HAS NOT ADOPTED A PLAN.—Any person described in subsection (a)(1)—

(1) who plans to carry out any activities described in subsection (a)(1),

(2) more than 180 days after the Administrator has developed a model contractor accreditation plan under subsection (a),

(3) in a State which has not adopted a plan under subsection (b),

must be accredited by another State which has adopted such a plan under subsection (b) before carrying out any of the activities described in subsection (a)(1).

(d) TRAINING COURSES.—The Administrator may designate training courses in asbestos inspection and abatement and the develop-

ment of asbestos management plans that the Administrator determines are equivalent to the contractor accreditation program under subseciton (a). A person who has completed and achieved a passing grade from one of such training courses shall be considered accredited for the purposes of this title until a date that is one year after the date on which the State in which such person is employed establishes an accreditation program pursuant to subsection (b).

(e) FINANCIAL ASSISTANCE CONTINGENT ON USE OF ACCREDITED PERSONS.—A school which is an applicant for financial assistance under section 505 of the Asbestos School Hazard Abatement Act of 1984 is not eligible for such assistance if the school uses any person described in subsection (a)(1) who has not been accredited under a plan based on the model plan developed under subseciton (a). This subsection shall apply to any financial assistance provided under the Asbestos School Hazard Abatement Act of 1984 more than 12 calendar months after the date of the enactment of this title.

SEC. 204. STATE GOVERNOR ASBESTOS REVIEW.

Within 180 days after the date of the enactment of this title, the Governor of each State shall establish administrative procedures for carrying out certain provisions described in sections 205 and 206. In establishing such procedures, the Governor shall designate, to carry out the provisions, those State officials who are responsible for implementing environmental protection or other public health programs in the State.

SEC. 205. CERTIFICATION OF SCHOOL INSPECTION AND ABATEMENT.

(a) CERTIFICATION REQUIREMENT.—Within 12 calendar months after the date of the enactment of this title, each local educational agency shall conduct a certification to determine the status of asbestos inspection and abatement carried out prior to the date of the enactment of this title in each school under its authority. A certification shall consist of submitting to the State Governor a written statement, signed by the highest ranking responsible official of the local educational agency, which contains each of the following items:

(1) For each school building, a statement on whether an inspection was conducted to ascertain the presence of any asbestos-containing material in the building, including a specific reference to whether an inspection was conducted in the boiler room of the building. If such an inspection was conducted, the following items of information shall be included in the statement:

(A) The dates of inspection.

(B) The name, address, and qualifications of each inspector.

(C) A description of the specific areas inspected.

(D) The name, address, and qualifications of each laboratory used for analyzing bulk samples or air samples of asbestos.

(E) The results of the inspection.

(2) For each school building, a statement on whether any actions to abate any hazardous asbestos-containing material found to be present were taken, including a specific reference to whether any actions were taken in the boiler room of the build-

ing. If any such abatement action was taken, the following items of information shall be included in the statement:

(A) The location or locations at which the abatement action was taken.

(B) Whether the method of abatement was repair, removal, enclosure, or encapsulation.

(C) The name, address, and qualification of the persons who conducted the abatement action.

(b) PUBLIC AVAILABILITY OF CERTIFICATION.—A copy of the certification required under subsection (a) shall be available in the administrative offices of the local educational agency for inspection by the public, including teachers, other school personnel, and parents.

SEC. 206. INSPECTION; ASBESTOS MANAGEMENT PLANS.

(a) INSPECTION.—Within 180 days after the Administrator promulgates regulations under section 202, or, if the Administrator fails to promulgate the regulations within the prescribed period under section 202, within 180 days after the end of such prescribed period, each covered local educational agency shall conduct an inspection for asbestos-containing material in all areas of each school under its authority that were not certified under section 205 to have been inspected previously and found to contain no asbestos-containing material. Each inspection shall comply with the regulations promulgated under section 202(b)(1).

(b) MANAGEMENT PLAN.—

(1) GENERAL REQUIREMENT.—Within 12 calendar months after the Administrator promulgates regulations under section 202, or, if the Administrator fails to promulgate the regulations within the prescribed period under section 202, within 12 calendar months after the end of such prescribed period, each covered local educational agency shall prepare and submit to the State Governor a management plan for abating hazardous asbestos-containing material in school buildings under its authority. Each plan shall provide for timely notification to the appropriate parents of children and employees affected by such plan of the existence of such plan, and of their right to comment to the Governor with respect to such plan. Such plan shall further provide for compliance with the regulations prescribed by the Administrator under sections 202(b) (2), (3), (4), (5), and (6) (or if there are no regulations, the standards in subsections (c), (d), and (e) of section 202) and shall include the following:

(A) A description of the results of the inspection conducted under subsection (a), including the dates of inspection; the names, addresses, and qualifications of inspectors; and a description of the specific areas inspected.

(B) A detailed description of measures to be taken to abate any hazardous asbestos-containing material, including the location or locations at which an abatement action will be taken and the method or methods of abatement to be used.

(C) An evaluation of resources needed to successfully complete abatement and carry out operation and maintenance.

(D)(i) A detailed description of criteria and procedures which were followed in selecting the persons who inspected

for asbestos-containing material and who analyzed the asbestos-containing material in laboratories, and which will be followed in selecting persons to abate the hazardous asbestos-containing material, or

(ii) if the State has adopted a contractor accreditation plan similar to the model contractor accreditation plan developed under section 203, a statement that the local educational agency followed (or will follow) its plan in selecting such persons.

(E) The names of the consultants who contributed to the plan, along with a description of their credentials.

(F) A detailed description of any asbestos-containing material found in the school building which was found not to be hazardous under the regulations prescribed under subsection 202(b) (or the standard in subsection 202(c)).

(G) An operation and maintenance plan developed in accordance with standards prescribed under section 202(b)(5).

(2) EXCEPTION FOR CERTAIN SCHOOLS.—If a covered local educational agency determines that a school under its authority—

(A) conducted an inspection for asbestos which complied with the regulations promulgated under section 202(b)(1),

(B) found asbestos-containing material, and

(C) removed all the asbestos-containing material existing in that school,

the local educational agency may omit that school from the management plan but must include a statement in the plan explaining how that school identified the asbestos-containing material and removed all the asbestos-containing material from the school.

(3) PLAN MAY BE SUBMITTED IN STAGES.—A covered local educational agency may submit a management plan in stages, with each submission of the agency covering only a portion of the school buildings under the agency's authority, if the agency determines that such action would expedite the identification and abatement of hazardous asbestos-containing material in the school buildings under the authority of the agency.

(4) MANAGEMENT PLAN ACCREDITATION.—Each such management plan shall contain a statement signed by an accredited asbestos contractor that such contractor has prepared or assisted in the preparation of such plan, or has reviewed such plan, and that such plan is in compliance with the applicable regulations and standards promulgated or adopted pursuant to section 202(b) of this title, and other applicable provisions of law.

(c) STATE ACTION.—The State Governor may disapprove a management plan submitted under this section within 60 days after the date of receipt of the plan. Disapproval shall be based on—

(1) a determination that the plan is not suited to the problem identified;

(2) its failure to assure that contractors accredited pursuant to this title will be used to carry out such plan;

(3) its failure to conform to regulations under section 202(a) on asbestos inspection and abatement (or with the standards in sections 202 (b) and (c) if there are no regulations); and

(4) the unreasonableness and untimeliness of the abatement schedule, taking into account circumstances relevant to the speed at which the hazardous asbestos-containing material should be abated, including public exposure to the hazard while the asbestos-containing material remains unabated.

If the State Governor disapproves a plan, the State Governor shall explain in writing to the covered local educational agency the reasons why the plan was rejected and the changes that need to be made in the plan. Within 30 days after the date on which notice is received of rejection of its plan, a covered local educational agency shall revise the plan to conform with the State Governor's required changes.

(d) LOCAL EDUCATIONAL AGENCY IMPLEMENTATION OF MANAGEMENT PLANS; CERTIFICATION.—If a management plan submitted under this section is not disapproved by the State Governor within such 60-day period, a covered local educational agency shall implement the plan. Within 12 calendar months after submission of its plan, each covered local education agency—

(1) shall implement the plan, and

(2) shall certify to the State Governor that the plan has been implemented, by submitting a statement in writing detailing the implementation.

(e) PUBLIC AVAILABILITY OF MANAGEMENT PLAN.—A copy of the management plan required under subsection (b) shall be available in the administrative offices of the local educational agency for inspection by the public, including teachers, other school personnel, and parents.

(f) The Administrator, upon request by a Governor and after notice and comment and opportunity for a public hearing in the affected State, may waive some or all of the requirements of this section and section 204 with respect to such State if it has established and is implementing a program of asbestos inspection and management that contains requirements that are substantially equivalent to the requirements of this section and section 204.

SEC. 207. ENVIRONMENTAL PROTECTION AGENCY RESPONSE AUTHORITY.

(a) IN GENERAL.—Whenever—

(1) the presence of asbestos-containing material in a school building may present an imminent and substantial endangerment to human health, and

(2) the local educational agency is not taking sufficient action consistent with standards prescribed under this title (as determined by the Administrator or Governor) to abate or arrange for the abatement of the asbestos,

the Administrator or the Governor of a State is authorized to act, consistent with standards prescribed under this title, to abate or arrange for the abatement of the hazard, or to take any other response measure which the Administrator or the Governor deems necessary to protect human health.

(b) COST RECOVERY.—The Administrator may seek reimbursement from a local educational agency or any other potentially responsible party in a court of the United States for all costs of abatement action under this section incurred by the United States Government. Nothing in this section creates a cause of action or in any other way

increases or diminishes the liability of any person under any other law.

(c) Venue.—In any case in which the Administrator seeks reimbursement from a local educational agency pursuant to subsection (b), such action shall be filed in the judicial district in which the abatement action occurred.

SEC. 208. ABATEMENT ACTION.

When the Administrator or the Governor of a State determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of the presence of asbestos in a school building, the Administrator may request the Attorney General of the United States, or the Governor may act, to secure such relief as may be necessary to abate such danger. The district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief, including injunctive relief, as the public interest and the equities of the case may require.

SEC. 209. PUBLIC PROTECTION.

(a) Public Protection.—No State or local educational agency may discriminate against a person in any way, including firing a person who is an employee, because the person provided information relating to a potential violation of this title to any other person, including a State or to the Federal Government.

(b) Labor Department Review.—Any public or private employee or representative of employees who believes he or she has been fired or otherwise discriminated against in violation of subsection (a) may within 90 days after the alleged violation occurs apply to the Secretary of Labor for a review of the firing or alleged discrimination. The review shall be conducted in accordance with section 11(c) of the Occupational Safety and Health Act.

SEC. 210. POLLUTION INSURANCE.

(a) Definitions.—As used in this section—

(1) Insurance.—The term "insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State of Federal law.

(2) Pollution liability.—The term "pollution liability" means liability for injuries arising from the release of asbestos.

(3) Risk retention group.—The term "risk retention group" means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any State—

(A) whose primary activity consists of assuming and spreading all, or any portion, of the pollution liability of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State; and

(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

(4) Purchasing group.—The term "purchasing group" means any group of persons which has as one of its purposes the purchase of pollution liability insurance on a group basis.

(b) State Laws.—Nothing in this section shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State. The definitions of pollution liability and pollution liability insurance under any State law shall not be applied for the purposes of this section, including recognition or qualification of risk retention groups of pruchasing groups.

(c) Risk Retention Groups.—

(1) Exemption.—Except as provided in this subsection, a risk retention group shall be exempt from the following:

(A) A State law, rule, or order which makes unlawful, or regulates, directly or indirectly, the operation of a risk retention group.

(B) A State law, rule, or order which requires or permits a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong.

(C) A State law, rule, or order which requires any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in the State.

(D) A State law, rule, or order which otherwise discriminates against a risk retention group or any of its members.

(2) Exceptions.—

(A) State laws generally applicable.—Nothing in paragraph (1) shall be construed to affect the applicability of State laws generally applicable to persons or corporations. The State in which a risk retention group is chartered may regulate the formation and operation of the group.

(B) State regulations not subject to exemption.—Paragraph (1) shall not apply to any State law which requires a risk retention group to do any of the following:

(i) Comply with the unfair claim settlement practices law of the State.

(ii) Pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus line insurers, brokers, or policyholders under the laws of the State.

(iii) Participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of pollution liability insurance losses and expenses incurred on policies written through such mechanism.

(iv) Submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to pollution liability insurance losses and expenses.

(v) Register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process.

(vi) Furnish, upon request, such commissioner a copy of any financial report submitted by the risk retention group to the commissioner of the chartering or licensing jurisdiction.

(vii) Submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

(I) the commissioner has reason to believe the risk retention group is in a financially impaired condition; and

(II) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group.

(viii) Comply with lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under clause (vii).

(3) APPLICATION OF EXEMPTIONS.—The exemptions specified in paragraph (1) apply to—

(A) pollution liability insurance coverage provided by a risk retention group for—

(i) such group; or

(ii) any person who is a member of such group;

(B) the sale of pollution liability insurance coverage for a risk retention group; and

(C) the provision of insurance related services or management services for a risk retention group or any member of such a group.

(4) AGENTS OR BROKERS.—A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(d) PURCHASING GROUPS.—

(1) EXEMPTION.—Except as provided in this section, a purchasing group is exempt from the following:

(A) A State law, rule, or order which prohibits the establishment of a purchasing group.

(B) A State law, rule, or order which makes it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its member, advantages, based on their loss and experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters.

(C) A State law, rule, or order which prohibits a purchasing group or its members from purchasing insurance on the group described in subparagraph (B) of this paragraph.

(D) A State law, rule, or order which prohibits a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time.

(E) A State law, rule, or order which requires that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form.

(F) A State law, rule, or order which requires that a certain percentage of a purchasing group must obtain insurance on a group basis.

(G) A State law, rule, or order which requires that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State.

(H) A State law, rule, or order which otherwise discriminates against a purchasing group or any of its members.

(2) APPLICATION OF EXEMPTIONS.—The exemptions specified in paragraph (1) apply to the following:

(A) Pollution liability insurance, and comprehensive general liability insurance which includes this coverage, provided to—

(i) a purchasing group; or

(ii) any person who is a member of a purchasing group.

(B) The sale of any one of the following to a purchasing group or a member of the group:

(i) Pollution liability insurance and comprehensive general liability coverage.

(ii) Insurance related services.

(iii) Management services.

(3) AGENTS OR BROKERS.—A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(e) APPLICABILITY OF SECURITIES LAWS.—

(1) OWNERSHIP INTERESTS.—The ownership interests of members of a risk retention group shall be considered to be—

(A) exempted securities for purposes of section 5 of the Securities Act of 1933 and for purposes of section 12 of the Securities Exchange Act of 1934; and

(B) securities for purposes of the provisions of section 17 of the Securities Act of 1933 and the provisions of section 10 of the Securities Exchange Act of 1934.

(2) INVESTMENT COMPANY ACT.—A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(3) BLUE SKY LAW.—The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.

SEC. 211. ENFORCEMENT CONSIDERATIONS.

In determining the amount of a civil penalty to be assessed under section 16 of this Act against a local education agency for failure to comply with a requirement of this title or a rule or regulation issued under this title, the Administrator shall consider—

(1) the significance of the violation;

(2) the culpability of the violator, including any history of previous violations under this Act;

(3) the ability of the violator to pay the penalty; and

(4) the ability of the violator to continue to provide educational services to the community.

SEC. 212. PREEMPTION.

(a) Nothing in this title shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to asbestos or asbestos-containing material, including the abatement thereof, in school buildings within such State.

(b) Nothing in this title or any standard, regulation or requirement promulgated pursuant to this title shall be construed or interpreted to preclude any court from awarding costs and damages associated with the abatement, including the removal, of asbestos-containing material, or a portion of such costs, at any time prior to the actual date on which such material is removed.

SEC. 213. DEFINITIONS.

For purposes of this title—

(1) the term "Administrator" means the Administrator of the Environmental Protection Agency;

(2) the term "local educational agency" means—

(A) any local educational agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381);

(B) the owner of any non-profit elementary or secondary school and building; and

(C) the governing authority of any school operated, pursuant to section 6 of the Act of September 30, 1950 (Public Law 874, 81st Congress) relating to impact aid for children of members of the Armed Forces.

(3) the term "covered local educational agency" means any local educational agency which has under its authority, after conducting certification under section 205—

(A) any school in which there was no inspection for asbestos-containing material or in which the local education agency is not able to certify, pursuant to section 205(a)(1), that all areas of each school building, including boiler rooms, were inspected for asbestos containing material;

(B) any school which conducted an inspection for asbestos-containing material, found asbestos-containing material, and did not abate the asbestos-containing material; or

(C) any school which conducted an inspection for asbestos-containing material, found asbestos-containing material, and abated the asbestos-containing material by a method other than removal.

(4) the term "non-profit elementary or secondary school" means any elementary or secondary school (as defined in section 198 of the Elementary and Secondary Education Act of 1965) owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully insure, to the benefit of any private shareholder or individual;

(5) the term "school building" means—

(A) structures suitable for use as classrooms, including school facilities such as laboratories, libraries, school eating facilities, or facilities used for the preparation of food;

(B) any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education;

(C) other facilities used for the instruction of students or for the administration of educational or research programs; and

(D) maintenance, storage, or utility facilities essential to the operation of the facilities described in subparagraphs (A), (B), and (C); and

(6) the term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, the Trust Territory of the Pacific Islands, and the Virgin Islands.

SEC. 214. SECRETARY OF DEFENSE TO ACT IN LIEU OF STATE GOVERNOR.

In the administration of this title, including sections 204, 205, 206, 207, and 208, any function, duty, or other responsibility imposed on a Governor of a State shall, in the case of a school operated pursuant to section 6 of the Act of September 30, 1950 (Public Law 874, 81st Congress), for children of members of the Armed Forces, be construed as having been imposed on the Secretary of Defense.

SEC. 215. OVERSEAS SCHOOLS OF DEPARTMENT OF DEFENSE.

(a) REGULATIONS.—The Secretary of Defense, in cooperation with the Administrator, shall, to the extent feasible and consistent with the national security, take such action as may be necessary to provide for the identification, inspection, and management (including abatement) of asbestos in any building used by the Department of Defense as an overseas school for dependents of the Department of Defense. Such identification, inspection, and management (including abatement) shall, subject to the preceding sentence, be carried out in a manner comparable to that provided for a local educational agency and a school building under this title.

(b) The Secretary of Defense and the Administrator shall issue such regulations as may be necessary to carry out the provisions of this section.

Asbestos School Hazard Abatement Act

(Public Law 98-377)

TITLE V—ASBESTOS SCHOOL HAZARD ABATEMENT

SEC. 501. This title may be cited as the "Asbestos School Hazard Abatement Act of 1984".

* * * * * * *

FINANCIAL ASSISTANCE

SEC. 505. (a) There is hereby established within the Environmental Protection Agency an Asbestos Hazards Abatement Assistance Program (hereinafter in this Act referred to as the "Assistance Program"), which shall be administered in accordance with this section.

* * * * * * *

(g)*(4) No financial assistance may be provided under this section to any school which uses any person described in section 203(a)(1) (to carry out any activities described in such section) of the Toxic Substance Control Act who has not been accredited under a plan based on the model plan developed under section 203(a) of that Act. This paragraph shall apply to any financial assistance provided under this section more than 240 days after the date of the enactment of the Asbestos Hazard Emergency Response Act of 1986.*

* * * * * * *

SEC. 512. (a)(1) There are hereby authorized to be appropriated for the asbestos abatement program not more than $50,000,000 for fiscal year ending on September 30, 1984, $50,000,000 for the fiscal year ending on September 30, 1985, and $100,000,000 for each of the five succeeding fiscal years.

(2) The sums appropriated under this title shall remain available until expended.

(b)(1) A State with qualified applicants shall receive no less than one-half of 1 per centum of the sums appropriated under this title or the total of the amounts requested by such applicants, whichever is less. Those amounts available in each fiscal year under this paragraph shall be obligated before the end of that fiscal year. For the purposes of this paragraph the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Bureau of Indian Affairs and, taken together, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(2) Of those sums appropriated for the implementation of this title, up to 10 per centum shall be reserved during the fiscal year ending September 30, 1984, and up to 5 per centum for the fiscal year ending September 30, 1985, for the administration of this title and for programs including, but not limited to, the following:

(A) the establishment of a training center for contractors, engineers, school employees, parents and other personnel to provide instruction on asbestos assessment and abatement;

(B) the development and dissemination of abatement guidance documents to assist in evaluation of potential hazards, and the determination of proper abatement programs;

(C) the development of rules and regulations regarding inspection, reporting and record-keeping; and

(D) the development of a comprehensive testing and technical assistance program.

In addition, for such purposes there are authorized to be appropriated out of the Asbestos Trust Fund established by section 5 of the Asbestos Hazard Emergency Response Act of 1986 $25,000,000 for each of fiscal years 1987, 1988, 1989, and 1990.

(c) Of the sums appropriated for the implementation of this title ten (10) percent of $10,000,000, whichever is less, shall be reserved during each of the fiscal years ending September 30, 1987 and 1988 for grants to States or local educational agencies to carry out the provisions of sections 205 and 206 of the Asbestos Hazard Emergency Response Act of 1986. Appropriated funds used to carry out this subsection shall be taken from funds that would otherwise be used to provide loans under this Act.

○

99th Congress
2d Session

SENATE

Report
99-445

EMERGENCY WETLANDS RESOURCES ACT OF 1986

REPORT

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

TO ACCOMPANY

S. 740

September 16 (legislative day, September 15), 1986.—Ordered to be printed

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CONTENTS

Page

Background and statement of the need for legislation 1
Section-by-section analysis:
  Section:
    1—Short title 4
    2—Findings and statement of purpose 4
    3—Definitions 4
  Title I—Extension of Wetlands Loan Act 5
  Title II—Revenues for migratory bird conservation fund:
    Section:
      201—Sale of admission permit at certain refuge units 5
      202—Price of migratory bird hunting and conservation stamp 8
      203—Transfers to migratory bird conservation fund 8
  Title III—State and Federal wetland acquisition:
    Section:
      301—National wetlands priority conservation plan 9
      302—Removal of restriction on acquisition 9
      303—Inclusion of wetlands in comprehensive statewide outdoor recreation plans 9
      304—Federal acquisitions 11
      305—Restriction on use of eminent domain in acquisitions 12
  Title IV—Wetlands inventory and trend analysis:
    Section:
      401—National wetlands inventory project 12
      402—Reports to Congress 14
  Title V—Miscellaneous provisions:
    Section:
      501—Migratory Bird Treaty Act 16
Hearings 16
Rollcall votes 16
Cost of legislation 16
Departmental report 19
Regulatory impact 29
Changes in existing law 29

99TH CONGRESS
2d Session

SENATE

REPORT
99-445

EMERGENCY WETLANDS RESOURCES ACT OF 1986

SEPTEMBER 16 (legislative day, SEPTEMBER 15), 1986.—Ordered to be printed

Mr. CHAFEE, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 740]

The Committee on Environment and Public Works, to which was referred the bill (S. 740) to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of wetlands by the acquisition of wetlands and other essential habitat, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

BACKGROUND AND STATEMENT OF THE NEED FOR LEGISLATION

The Emergency Wetlands Resources Act of 1986 provides four approaches to increase the acquisition and protection of wetlands: (1) extend the Wetlands Loan Act and forgive repayment of the advances made to the Migratory Bird Conservation ("Duck Stamp") Fund; (2) raise additional revenues for deposit in the Duck Stamp Fund; (3) allow the Land and Water Conservation Fund to be used specifically for purchasing wetlands; and (4) require study and inventory of the Nation's wetlands.

It is estimated that less than one-half of the 215 million acres of wetlands that once existed in the coterminous United States have been converted to upland areas. Estimates indicate that there was a net loss of nine million acres of wetlands between the mid-1950's and mid-1970's. The greatest losses during that period occurred in Louisiana, Mississippi, Arkansas, North Carolina, North Dakota, South Dakota, Nebraska, Florida, and Texas. Unfortunately, the rate of wetland loss does not appear to have diminished over the last decade. The U.S. Fish and Wildlife Service estimates that "we are continuing to lose wetlands at the annual pace of nearly one-half million acres, an area approximately 12 times the size of the District of Columbia."

The Nation's wetlands provide valuable goods and services for the American people. The Department of the Interior, in expressing its views on the Emergency Wetlands Resources Act, stated that it is "well established that the loss of wetlands is one of the most serious environmental problems facing the Nation today, with far-reaching implications not only for fish and wildlife resources but also for outdoor recreation, business, agriculture, and flood control."

Recognition of the need for wetlands conservation first became widespread because of international concern for migratory birds which depend upon wetlands for survival. As far back as 1916, the United States and Great Britain (acting for Canada) negotiated the "Convention for the Protection of Migratory Birds". This Convention was the first of five treaties that established an international, cooperative effort to conserve migratory birds and their habitats. These treaties provide the foundation for national laws that grant the Federal Government the authority and responsibility to manage migratory birds and their habitats. In 1983, the U.S. Supreme Court confirmed that "[t]he protection of migratory birds has long been recognized as a national interest of very nearly the first magnitude. . . ." *North Dakota* v. *United States,* No. 81-773 (March 7, 1983).

A Federal role in the acquisition of wetland habitats for migratory birds has been recognized by Congress for many years. The enactment of the Migratory Bird Conservation Act in 1929 and the Migratory Bird Hunting and Conservation Stamp Act in 1934 established the foundation of our present wetlands acquisition program.

The Migratory Bird Conservation Act improved our ability to meet our treaty obligations and provided authority for the acquisition of migratory bird habitat. Funding for this acquisition is provided by section 4 of the Migratory Bird Hunting and Conservation Stamp Act in the form of a permanent appropriation from the Migratory Bird Conservation Fund, which contains moneys generated from the sale of these so-called "Duck Stamps" and certain surplus Federal property. Areas acquired are incorporated into the National Wildlife Refuge System.

In 1959 the U.S. Fish and Wildlife Service and the State fish and wildlife agencies jointly determined that protection and management of 12.5 million acres of waterfowl habitat in the coterminous U.S. was necessary to maintain existing waterfowl populations. To achieve this goal, the Fish and Wildlife Service needed to acquire an additional 3.8 million acres and the States an additional 2.5 million acres.

In 1961 Congress passed the Wetlands Loan Act to accelerate Federal acquisition of migratory waterfowl habitat. This law, as amended, authorizes the appropriation of $200 million as a loan against future revenues from the sale of Duck Stamps. At the present cost of $7.50 per stamp, revenues are approximately $14.4 million per year. The authorization, of which about $190 million has been appropriated, expires on September 30, 1986, and, beginning with the first quarter after October 1, 1986, 75 percent of the revenues raised from the sale of Duck Stamps must be used to repay the loan. Roughly $3.5 million would then remain available on an annual basis to purchase the necessary wetlands.

Using Duck Stamp funds and funds advanced against future stamp sales under the Wetlands Loan Act, the Fish and Wildlife Service purchased in fee title or easement approximately 1.9 million acres toward their goal from 1959 to 1977. Acquisition of the remaining 1.9 million wetland acres for conservation of migratory birds was to be completed during the 10-year period between fiscal year 1977 and fiscal year 1986. Over the past decade, however, the Fish and Wildlife Service will have acquired less than 25 percent of the 1.9 million acres of waterfowl habitat identified for Federal acquisition. Similarly the States have acquired only about 20 percent of the 2.5 million acres identified for State acquisition. Clearly, we need to do a better job of meeting our goals.

In May 1986 the U.S. and Canada signed the "North American Waterfowl Management Plan" which describes the actions and size of the task necessary to achieve waterfowl population goals that will satisfy public demand. The Plan calls for the acquisition, protection, or improvement of approximately 1.9 million acres in the U.S. and 3.7 million acres in Canada. Protection and improvement of more than 1 million acres of mallard and pintail breeding habitat is needed in the pothole area of the northcentral U.S. at an estimated cost of $237 million. In the lower Mississippi River-Gulf Coast region, the Plan estimates that 686,000 acres of wintering habitat are needed, and roughly 80,000 acres of additional wintering habitat are needed in the Central Valley of California. The cost to achieve these wintering habitat protection and improvement goals would probably exceed $217 million. Finally, black ducks need an additional 50,000 acres of migration and wintering habitat along the East Coast of the U.S. and 10,000 acres in the Great Lakes-St. Lawrence lowlands in the U.S., at an estimated cost of $23 million.

Thus, the total cost for habitat protection in the U.S. identified by the "North American Waterfowl Management Plan" approaches $500 million. The required waterfowl habitat protection and improvement in Canada may reach $1 billion. The cost of providing this habitat protection will have to be shared by governmental and nongovernmental entities in the U.S. and Canada. The Emergency Wetlands Resources Act of 1986 will provide a guarantee of approximately $40 million per year for Federal acquisition. Of this, approximately $30 million per year will be raised from user fees and $10 million per year will come from the current duties paid on imported arms and ammunition. The Act also provides authority for Congress to appropriate additional State and Federal wetland acquisition monies from the Land and Water Conservation Fund, which presently authorizes $900 million each year, primarily from offshore oil and gas revenues, for park and refuge purchases.

On March 26, 1985, S. 740, the Emergency Wetlands Resources Act, was introduced. A hearing was held on November 18, 1985, in Washington, D.C. As reported by the Committee on Environment and Public Works, S. 740 will accelerate Federal acquisition and encourage State acquisition of wetlands habitat; equitably distribute the costs of such acquisition by utilizing an existing source of funding—the Land and Water Conservation Fund—to supplement moneys provided by hunters and other conservationists; place a high priority on the national wetlands inventory project, which maps and analyzes the status and trends of our Nation's wetlands; and will develop the information needed to decide how we can develop a more effective Federal policy to protect these important natural areas.

SECTION-BY-SECTION ANALYSIS

Section 1—Short Title

Section 1 states the short title of the legislation, "The Emergency Wetlands Resources Act of 1986."

Section 2—Findings and Statement of Purpose

Section 2 states the findings and purpose of the legislation. The findings state the value of wetlands in terms of economic, water and food supply, fish and wildlife, and flood control as well as other values. They also reflect the fact that these areas are disappearing at an alarming rate and that their loss has been stimulated, to some degree, by government actions. Finally, the findings state that the existing Federal, State, local, and private efforts to protect wetlands should be strengthened in order to minimize further losses.

Although Fish and Wildlife Service concern for wetland conservation stems primarily from migratory bird conservation-related responsibilities, wetlands provide other equally important benefits. Many resident species of wildlife such as muskrats, deer, and pheasants depend on wetlands. Approximately one third of the species protected under the Endangered Species Act also require wetland habitats for their continued survival. Water from some wetland basins is discharged into aquifers and thus replenishes the underground water supplies used for irrigation of crops and drinking water. Water from heavy rains or snowmelt is trapped and held temporarily in wetland basins, thus providing additional agricultural water in the north, while simultaneously reducing the frequency and severity of floods suffered by towns and agricultural lands downstream. By reducing and slowing the rate of runoff, wetlands also reduce the rate at which topsoil is lost through erosion. Sediment and pollutants settle in wetland basins and reduce the amount of these substances that reach the rivers, streams, and water supplies of downstreams residents. Waterfowl and other birds are not the only losers when wetlands are drained unwisely, nor should wetland conservation be perceived as the concern solely of the birdwatcher or the waterfowl hunter.

This section of the bill also states the purpose of the legislation, which is to promote the conservation of wetlands through State and Federal wetland acquisition and cooperative efforts among private interests and local, State and Federal governments for the conservation and management of wetlands.

Section 3—Definitions

This section defines the term "wetland." The definition is not intended to change the types of lands and waters which may be acquired from those historically or currently acquired by the U.S.

Fish and Wildlife Service. The definition, which is essentially identical to the one used in the 1985 Food Security Act (P.L. 99–198), recognizes that wetlands are lands where saturation with water is the dominant factor determining the nature of soil development and the types of plant and animal communities living in the soil and on its surface. The single feature that most wetlands share is soil or substrate that is at least periodically saturated with or covered by water. The water creates severe physiological problems for all plants and animals except those that are adapted for life in water or saturated soil. Consequently, the term "wetland" has been defined on the basis of a predominance of hydrophytic vegetation and hydric soil, which is consistent with the scientific of wetlands developed by the U.S. Fish and Wildlife Service for purposes of the National Wetlands Inventory. Coastal and inland marshes and estuaries, river-associated water-saturated areas, inland lakes, potholes, pocosins, bogs, mudflats, and bottomland hardwood forests, and other wetland types are authorized for acquisition under this Act.

The term "hydrophtic vegetation" as defined in this section is the same as that used by the U.S. Fish and Wildlife Service in their classification of wetlands for the National Wetlands Inventory. As such it includes plant species that require saturated soil conditions, as well as those that can tolerate saturated wetland conditions but are capable of surviving in dry or upland areas. The term "hydric soils" is consistent with the use of that term by the National Technical Committee for Hydric Soils and the National Wetlands Inventory.

TITLE I. EXTENSION OF WETLANDS LOAN ACT

Section 101 amends the Wetlands Loan Act to extend the availability of funds under it through fiscal year 1988 and to delete the provisions for repayment of advances under the Act.

TITLE II. REVENUES FOR MIGRATORY BIRD CONSERVATION FUND

Title II includes measures which will increase the Migratory Bird Conservation Fund and the appropriations made under Section 4 of the Act of March 16, 1934 (48 Stat. 541; 16 U.S.C. 718d) as amended. That provision of the law states that "All moneys received into such [the migratory bird conservation] fund are appropriated . . . and shall be available therefor until expended . . ." Therefore, the additional revenues received into the fund are appropriated.

Section 201—Sale of Admission Permit at Certain Refuge Units

This section authorizes the Secretary of the Interior to establish admission fees at certain units of the National Wildlife Refuge System. In developing this provision, the long history of support for wildlife programs by American sportsmen was recognized. Since the establishment of the Migratory Bird Hunting and Conservation Stamp (known popularly as the "Duck Stamp") in 1934, about $300 million has been collected from sportsmen and other conservationists who buy the stamps for the acquisition of 3.66 million acres of migratory bird habitat. Some of our Nation's most spectacular and valuable refuges, such as Chincoteague National Wildlife Refuge in Virginia, have been purchased with Duck Stamp funds. It thus is appropriate that those persons who visit wildlife refuge units for purposes other than hunting either purchase Duck Stamps or make similar contributions to the expansion of the refuge system.

In essence, the provisions allow the Secretary of Interior to designate refuge units where entrance fees will be charged and to establish a reasonably-priced admission permit fee for those units. Before designating such a refuge unit, however, the Secretary is required to determine that (a) the level of recreational visitation is high enough to be economically justifiable; (b) a practical mechanism exists to collect fees for admission permits; and (c) imposition of such fees is not likely to result in undue economic hardship for a significant number of visitors to the refuge unit. These criteria are necessary because only certain refuge units lend themselves to the administration of an admission fee system. Refuge units where visitation is low or where access cannot be effectively controlled are not appropriate for the imposition of entrance fees.

Subject to certain restrictions, the Secretary is also given broad authority to set the admission price. The great variety of wildlife and other recreational values that can be found throughout the refuge system make the setting and fixing of such a fee legislation impractical. The provision does include language that the admission fees shall be "fair and equitable". They should not be set at a level that would discourage public visitation of wildlife refuge units. The Secretary shall monitor the number of visits carefully to determine if the entrance fee is discouraging visitors and, if it is, lower the fee. Fees are to be set on a unit by unit basis.

Because they are already contributing directly to the expansion of the refuge system, persons holding a valid Duck Stamp are to be admitted without an additional entry permit. This provision should encourage many additional people to purchase stamps. In addition, persons holding either a valid Golden Eagle or Golden Age Passport are exempt from purchasing single visit permits. What constitutes a "reasonable fee" for a single visit permit can be determined in part by recognizing that the price of a Duck Stamp is set by statute and that possession of a valid stamp authorizes unlimited general admission to public areas of designated units. A single visit permit should cost considerably less than a Duck Stamp. In any case, the Secretary may not charge more than $7.50 for a permit authorizing a single visit to the refuge unit.

This entire section is modeled after the Land and Water Conservation Fund Act's provisions governing entry fees at National Parks. The Secretary's experiences with the administration of Park fees should be extensively utilized in the development and administration of the Refuge fee program. There is no requirement that fees be the same at every designated unit.

The size or location of a particular Refuge unit or the lack of complete visitor facilities may make it difficult if not impossible to fully visit the refuge unit in a single day or to remain in the unit for the entire day. Therefore, upon establishment of an admission fee at a particular unit of the National Wildlife Refuge System, the Secretary shall define what constitutes a "single visit" at that unit. A "single visit" may be for a period of from one to fifteen days.

Special admission permits for uses such as group activities may be issued in accordance with procedures and at fees established by the Secretary. The purpose of the group permits is to allow for educational, nature observation or similar tours by organized groups. The fees for group permits should be set low enough that they will not serve as a significant disincentive to refuge visitation. There is no requirement that group fees be set at a fixed level. Special admission permits for certain groups may be issued free or at nominal fees. The discretionary authority to issue special admission permits to individuals should be used only for persons, such as researchers, contractors for work on refuges, local fire and police authorities and others for whom individual permits would not be appropriate. Such special permits should not be issued to any persons who visit refuge units for primarily recreational purposes. Frequent visitors may escape the burden of purchasing individual permits by buying a valid Duck Stamp or Golden Eagle Passport.

The Secretary is directed to establish procedures for the issuance of permits at no cost to certain individuals. Such free permits are to be available to blind and disabled persons. Special permits for these persons shall be for the lifetime of the permittee but shall not be transferable and shall not cover persons other than the individual permittee.

No admission fee shall be charged for nonstop travel through a designated unit if such travel is by private noncommercial vehicle and is over a Federal road or highway which is commonly used by the public as a means of travel between two places which are outside the designated unit. Based upon the location and configuration of the refuge unit and the road, or other relevant factors, the Secretary may require a permit at no cost for such travel. Similarly, no fee shall be charged for travel by inholders to and from their property. Whether or not a permit will be required must be decided by the Secretary on a case by case basis. If a permit is required, it shall be at no cost to the inholder. Free permits should be available to persons visiting inholders on their property. These permits need not allow for travel to any area of a designated unit other than an inholding. By purchasing a valid Duck Stamp on an annual basis, inholders can assure themselves of unlimited general entry to public areas of a designated unit.

Thirty percent of the revenues collected from the sale of permits and Golden Eagle and Golden Age Passports at designated refuge units shall be used without further appropriation, first, to defray the cost of collection; second, for operation and maintenance of the collecting refuge unit; and third, for operation and maintenance of all units within the National Wildlife Refuge System. The remaining 70 percent of these revenues are to be deposited into the Migratory Bird Conservation Fund and used to acquire refuge habitat for migratory birds.

A person who holds a stamp, passport, or permit and any persons accompanying such permittee in a single, private, noncommercial vehicle or, where entry to the area is by means other than a single, private, noncommercial vehicle, the permittee and any accompanying spouse, children or parents shall be entitled to general entrance into a designated unit covered by the permit, stamp, or passport. This provision allows groups of persons arriving in noncommercial vehicles and immediate family members to be admitted on a single permit, stamp, or passport that was issued on payment of a fee. Requiring that each passenger in a car or each member of a family purchase a permit, stamp, or passport would make the cost of visiting refuge units prohibitive.

All permits authorized by this section shall be available and for sale at all designated refuges. Admission permits are nontransferable and do not grant any privileges for activities for which separate fees are charged under the Land and Water Conservation Fund Act.

Notices that an admission fee is required shall be prominently posted at designated refuge units and included in appropriate publications of the Department of the Interior. Because this is a user fee, the notice should include a statement of how the collected funds are to be used. Persons who visit units of the National Wildlife Refuge System are most often those who are concerned about the conservation of wildlife and have been supportive of efforts to acquire wildlife habitat. They should be informed that the admission fees are to be used for this purpose.

Section 201 also allows the Director of the U.S. Fish and Wildlife Service to accept the services of volunteers to sell admission permits, Golden Eagle and Golden Age Passports, or Duck Stamps at the designated refuge units. This provision is not intended to conflict with other volunteer efforts to sell Duck Stamps at other locations.

Section 202—Price of Migratory Bird Hunting and Conservation Stamp

Over a five year period, the price of the Duck Stamp is gradually increased from its current $7.50 to $10.00 to $12.50 and, finally, to $15.00. The increase is designed to compensate for increases in the cost of wetland habitat that have already occurred. A gradual increase was instituted to minimize any adverse effects on the number of stamps which may result from the higher price.

Section 203—Transfers to Migratory Bird Conservation Fund

Section 203 directs that an amount equal to the amount of duties collected on imported arms and ammunition be paid into the Migratory Bird Conservation Fund on a quarterly basis. Annual revenues from such duties are estimated to be $10 million annually.

TITLE III. STATE AND FEDERAL WETLAND ACQUISITION

Title III of the Emergency Wetlands Resources Act of 1986 clarifies and emphasizes the importance of the Land and Water Conservation Fund Act in the protection of wetlands. The State grant program authorized by that Act has been available for acquisition of wetlands, but, in fact, this important aspect of that program has been given low priority in the comprehensive statewide outdoor recreation planning process. Therefore, wetlands have received little attention. On the Federal side, the Land and Water Conservation Fund Act also has had a limitation with regard to migratory waterfowl areas which has reduced the acquisition of wetlands with these funds. Title III would correct both of these problems.

Section 301—National Wetlands Priority Conservation Plan

Section 301 directs the Secretary of the Interior to develop a national wetlands priority conservation plan. The Secretary is required, after consultation with the Administrator of EPA, the Secretaries of Commerce and Agriculture, and the chief executive officer of each State, to specify in the plan the types of wetlands and wetland interests which should be givern priority in Federal and State acquisition efforts. Wetlands types may be identified by the region where they occur (such as the Lower Mississippi River Valley or Prairie Pothole Region), by the U.S. Fish and Wildlife Service's classification (such as forested or emergent wetland), by a combination of these methods (forested wetlands in the Lower Mississippi River Valley), or by some other means deemed appropriate by the Secretary of Interior.

In establishing priorities for the wetlands types identified, the Secretary is directed to take into account the estimated proportion remaining of the respective types of wetlands which existed at the time of European settlement, the estimated current rate of loss and the threat of future losses of the respective wetland types, and the contributions of the respective wetland types. The Secretary specifically must consider the contributions made by various wetland types with respect to (1) wildlife, including endangered and threatened species, migratory birds, and resident species; (2) commercial and sport fisheries; (3) surface and groundwater quality and quantity, and flood control; and (4) outdoor recreation. No one of these services or products provided by the respective wetlands types should be given greater priority than any other. Instead, the Secretary should consider the broadest range of wetlands values in establishing priorities and not limit his consideration to any one service or product contributed by a wetlands type.

Section 302—Removal of Restriction on Acquisition

Section 302 allows appropriation under the Land and Water Conservation Fund Act for purchase of wetlands acquired pursuant to section 304 of the Emergency Wetlands Resources Act of 1986. This section also removes the prohibition on the use of Land and Water Conservation Fund appropriations for the Federal acquisition of migratory waterfowl areas by the Fish and Wildlife Service. There are no similar restrictions on the U.S. Forest Service or the National Park Service. Consequently, in addition to benefiting wetlands, this provision will make the land acquisition programs under the Land and Water Conservation Fund consistent.

Section 303—Inclusion of Wetlands in Comprehensive Statewide Outdoor Recreation Plans

Section 303(1) would require each State specifically to include consideration of wetlands within that State as an important outdoor recreation resource within their statewide comprehensive outdoor recreation plan (SCORP) in order to be considered for financial assistance under the Land and Water Conservation Fund Act. This would be applicable for fiscal year 1988 and thereafter. The amendment also would permit the States to submit a State wetlands priority plan as an alternative to submitting a revised

SCORP for Department of the Interior approval. Such a submission would be considered to be a part of an addendum to the existing SCORP for Land and Water Conservation Fund Act requirements. This priority plan would have to be developed in consultation with the State agency that manages fish and wildlife resources. The committee envisions this plan to be an inventory of wetlands that could be acquired by the State. The inventory would have to be consistent with the national wetlands priority conservation plan developed under section 301 of this Act or, if that plan has not been completed, with the standards set forth in that section of this Act.

Section 303(2) would add the acquisition of wetland areas as a specifically authorized project purpose under the State grant program. This acquisition would have to be consistent with section 301 of the Emergency Wetlands Resources Act of 1986. This is to be broadly construed to include wetlands that will be subject to direct recreation use and to those that will produce valuable recreation opportunities elsewhere and that will not be subject to direct public access. All other requirements of the State-side Land and Water Conservation Fund grant program would remain applicable. Specifically, the provisions of section 6(F)(3) of that Act would be applicable to wetlands acquired under this amendment. That section provides that lands acquired or developed with Land and Water Conservation Fund assistance can only be converted to an alternative use with the permission of the Secretary and requires the States to provide suitable replacement lands.

Section 303(3) also concerns the conversion provisions of the existing Land and Water Conservation Fund Act. Under the existing law, suitable replacement land must be both of at least equal fair market value and of reasonably equivalent usefulness and location. Although use of wetland as a substitute is not precluded per se, the fact that most LWCF projects involve urban lands precludes that usage in fact. This amendment would provide that wetland areas proposed to be acquired as replacements for LWCF lands slated for conversion to other uses shall be considered to be of reasonably equivalent usefulness and location with the recreation property proposed for conversion. This provision has two advantages. First, it will encourage the acquisition of wetlands for replacement purposes when conversions become necessary and, second, it will provide an alternative approach when replacement lands of reasonably equivalent usefulness and location are difficult, or impossible, to find. The provision is permissive and does not require a State to use wetlands as replacement for converted lands. However, it will provide States and local governments with a broader opportunity to locate replacement lands. Because the amendment does leave the decision to the States, it is difficult to project how many acres of wetlands may be acquired in this manner. It is clear, however, that conversions and requests for conversions are increasing (367 completed during the first 21 years, an average of 17.5 per year; approximately 50 currently pending). Coupled with the fact that there has been a total Federal-State investment of $6 billion (not adjusted for inflation) since the program's inception, the potential benefits accruing to wetlands protection could be substantial.

Section 304—Federal Acquisitions

Section 304 authorizes the Secretary of the Interior to purchase wetlands or interests in wetlands with funds appropriated under the Land and Water Conservation Act provided that those acquisitions are consistent with the wetlands priority conservation plan under section 301 of the Emergency Wetlands Resources Act of 1986. Acquisition of wetlands or interests in wetlands with funds from the Migratory Bird Conservation Fund under the authority of the Migratory Bird Conservation Act is not subject to this requirement for consistency with the national wetlands priority conservation plan.

Acquisition should be limited to those purchases of fee title or easements of wetlands and associated upland areas that contribute appreciably to the long-term preservation of such wetlands and associated populations of fish, wildlife, and plants. Acquisition of upland areas adjacent to wetlands is often essential to maintaining the values of those wetlands. Acquisition of less than fee interests, such as acquiring the surface estate but not the mineral interests or acquiring an easement, is often appropriate. Long-term preservation of wetlands and associated uplands may often best be achieved through obtaining easement in perpetuity.

As landowners, the Federal Government has a responsibility to make payments in lieu of taxes. Historically, insufficient funds have been requested by the President and appropriated by the Congress to make full payments. For instance, for fiscal year 1987 the President's budget request seeks only 58 percent of the amount that is required to be provided to counties under the Refuge Revenue Sharing Act. Failure to provide full payment to counties has produced substantial local opposition to Federal wetlands acquisition and has, consequently, impeded Federal efforts to protedt important migratory bird habitat in the prairie pothole region of the northcentral U.S., particularly in North Dakota. The Secretary is urged, therefore, in the strongest possible terms to request appropriation of 100 percent of the in lieu of tax payments due counties for acquisition by the U.S. Fish and Wildlife Service.

Considerable confusion exists with respect to the number of acres subject to Federal easements in North Dakota. This is because prior to 1976, wetlands subject to particular easements were not mapped as part of the official documentation. When requested by landowners subject to Federal easement in North Dakota, the U.S. Fish and Wildlife Service is directed to map the areas covered by pre-1976 easements as well as to identify the present location of wetlands on their properties. When easements are identified in this manner, the Service should adjust the State acreage total as necessary. The Service should also report to the Committee within one year on the number of properties so evaluated and any adjustments that were made to total State acreage figures.

The increased authority for Federal acquisition of wetlands under the Land and Water Conservation Fund provided by the Emergency Wetlands Resources Act of 1986 should not reduce annual appropriations made from that Fund for parks, refuges, forests, and endangered species. Annual appropriations from the Land and Water Conservation Fund have historically been significantly less than the authorized $900 million. The importance of and need for increased appropriations from that Fund should be underlined by the authorizations provided under this Act.

Section 305—Restriction on Use of Eminent Domain in Acquisitions

Section 305 directs that the powers of condemnation or eminent domain shall not be used under any provision of this Act to acquire wetlands which either have been constructed for the purpose of farming or ranching or have resulted from conservation activities associated with farming or ranching. Examples of such wetlands include ponds which have been constructed for watering stock and wet areas which result incidentally from irrigation. With respect to other wetlands, the U.S. Fish and Wildlife Service should continue its present policy of normally acquiring land only from willing sellers. The Service is directed to continue to use condemnation proceedings only in unusual cases when damages to wetlands resources cannot otherwise be prevented or in cases where its use would assist to clear title from a willing seller.

TITLE IV. WETLANDS INVENTORY AND TREND ANALYSIS

Title IV provides a schedule for continuation of the National Wetlands Inventory program mandated by the Clean Water Act Amendments of 1977 and operated by the United States Fish and Wildlife Service. The Inventory will indicate the current status of our Nation's wetlands and facilitate efforts to protect this vital natural resource. This title also requires the Secretary of the Interior to make a complete and thorough analysis of the extent to which Federal subsidies influence the treatment of wetlands and make recommendations regarding potential changes in Federal policy toward wetlands.

Section 401—National Wetlands Inventory Project

Section 401 establishes a schedule for producing the National Wetlands Inventory maps for the highest priority wetland and deepwater habitat areas, the remainder of the contiguous United States, and Alaska and other noncontiguous portions of the United States. The definition of "wetland" included in this bill is derived from and is consistent with the definition currently being used by the National Wetland Inventory Project. To the extent the definitions may differ, the U.S. Fish and Wildlife Service is not required to alter its mapping process.

This section recognizes the importance and value of the program instituted by the United States Fish and Wildlife Service known as the National Wetlands Inventory. The goal of this program, which utilizes highly sophisticated imagery, interpretation, and computer mapping techniques, is to categorize and map all of the wetland and deepwater habitat contained within the boundaries of the United States by type. The data and maps which have been produced by the end of fiscal year 1986 encompass approximately 46 percent of the high priority wetlands systems in the lower 48 states and 12 percent of Alaska. This mapping and classification of wetlands has proven to be extremely valuable for purposes such as estimating the status and trends of wetland destruction as well as being useful for planning of construction projects by private and public interest. While the maps produced to date are specifically not intended to be used for regulatory purposes, their value in the scoping of review of Corps of Engineers permit activities and proposed wetlands acquisitions is widely recognized.

The United States Fish and Wildlife Service has shown a commitment to continue the development and updating of the inventory, but due to the high cost of the technologies involved, the progress towards completion of mapping the coterminous United States has been slowed and directed, to some extent, away from the areas of highest priority to areas where state matching funds are available.

The completion of the first round of mapping for the National Wetlands Inventory, and the continued updating and improvement of those maps through time, is vital to the development and implementation of a reasonable, technically sound, effective, wetlands acquisition program as well as the continuation of their utility in construction planning.

The U.S. Fish and Wildlife Service has identified those areas which it believes are the top priorities for mapping. Those areas would include the entire coastal zone of the United States, flood plains of the major river systems, and the prairie pothole region which is the nesting ground for a large portion of our migratory waterfowl. These categories are indeed the most important for accelerated mapping, and accordingly, subsection (a)(1) requires the Fish and Wildlife Service to complete the National Wetlands Inventory maps for those areas by September 30, 1988.

Subsection (a)(2) provides that, for those portions of the contiguous United States for which maps have not been previously produced, the Fish and Wildlife Service is directed to complete the inventory by September 30, 1998.

Recognizing the difficulty in preparing the Wetlands Inventory maps for Alaska and other non-contiguous portions of the United States, subsection (a)(3) requires only that the maps be produced as soon as is practicable.

The September, 1982, report entitled "Status and Trends of Wetlands and Deepwater Habitat in the Coterminous United States, 1950's and 1970's" has proven to be a valuable source of information on the relative losses of different types of wetlands and deepwater habitat for the period of study. In order to effectively plan and carry out a program of wetlands protection, which includes the acquisition of wetlands, this report should be regularly updated and improved based on the inventory and subsequent changes. Therefore, subsection (a)(4) requires the Fish and Wildlife Service to regularly update and improve the information contained in the "Status and Trends" report, with the first update to be produced by September 30, 1990, and revisions every 10 years thereafter.

Subsection (b) directs the Secretary of the Interior to notify the appropriate State and local units of government when he proposes to begin preparation of maps under the National Wetland Inventory project. This notice must include, at a minimum, an identification of the area to be mapped, the proposed schedule for completion, and the identification of a source of further information. It is important that the Inventory be as accurate as possible. Therefore, the Fish and Wildlife additionally should consult with other Federal agencies and appropriate State agencies regarding draft wetlands identifications. Also, preliminary or draft wetlands maps should be made available for public inspection in Fish and Wildlife Service field offices, district offices of the Soil Conservation Service of the U.S. Department of Agriculture, and other local offices deemed appropriate. Notices of the availability of the draft maps should be placed in local newspapers.

Section 402—Reports to Congress

Section 402(a) requires that the Secretary of the Interior prepare, in consultation and cooperation with the Secretary of Agriculture, two reports to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Environment and Public Works of the Senate regarding wetlands trends. The first of these reports, due by March 30, 1987, is to detail the status, condition, and trends of wetlands in the lower Mississippi alluvial plain and the prairie pothole region of the United States. The second report, due by September 30, 1987, is to address the trends of wetlands in all other areas of the U.S. All Federal agencies shall coordinate with the Secretary concerning the role of each and participate to the extent practicable in assuring that the data is accurate and complete.

The statutory and regulatory mechanisms of the Federal Government, including expenditures, grants, and financial assistance have a significant impact on wetlands throughout the United States. These impacts may either contribute to the destruction and degradation of the Nation's wetlands or to the protection and enhancement of these resources. Construction projects, either for Federal facilities themselves, or through public works expenditures for highway systems, sewer systems, housing developments, and the like, can have immediate and easily definable adverse impacts. Other detrimental programs, while certainly of concern, are less readily quantified in terms of their impact on wetland resources. These types of programs would include commodity loans and purchase programs for various farm products, production stabilization programs and income tax provisions which provide for rapid depreciation of the capital costs of activities associated with cleaning or draining a wetlands habitat for agricultural purposes. Even less well understood is the impact of such programs as disaster assistance and mortgage guarantees which, while they support development, do not have readily identified, direct links to destruction or degradation of wetlands. Finally, the impact of general revenue sharing grants is not well defined but could in fact result in some inducement to the destruction and degradation of the wetland resources.

At the same time Federal programs such as the Fish and Wildlife Service's acquisition of wetlands under the Migratory Bird Conservation Act and Wetlands Loan Act have obvious benefits for the protection and enhancement of wetlands. Many Federal actions beneficial to wetlands conservation are pursued under the Clean Water Act. Section 404 of that Act regulates the discharge of dredged or fill material in wetlands and other waters of the U.S. Other Clean Water Act programs which protect or enhance wetlands include control of nonpoint source pollution, restoration of bays and estuaries, and wetlands research. Many other Federal activities may benefit wetlands conservation in less definable ways.

Early discussion on the contents of this bill considered the elimination of one or more Federal programs which would have a generally beneficial effect on the rate of wetlands loss. However, there is a notable lack of information regarding not only the environmental and economic costs and benefits from eliminating or restricting some future Federal expenditures or financial assistance, but also the environmental and economic costs and benefits from failing to eliminate or restrict these expenditures and assistance. Therefore, the compilation of data is necessary for an informed and reasonable decision to be made concerning appropriate mechanisms for achieving the goal of conservation of wetlands resources and as a necessary prerequisite to moving forward.

Subsection (b) outlines the expected report contents. The report shall contain an overall analysis of the factors which induce wetlands destruction and degradation or protect or enhance wetlands based on the latest information available. A thorough review of Federal statutory and regulatory mechanisms, including expenditures and financial assistance, should be made to determine which of these mechanisms induce wetlands destruction or degradation and which protect or enhance wetlands, and to analyze the relative importance of each. A compilation and analysis of Federal expenditures that result from the loss, protection and enhancement of wetlands shall be made. Such expenditures might, for instance, include the cost of providing the additional flood protection necessary to offset the flood retention capacity of a lost wetlands system, or the cost of mitigation for flood control projects which has to be provided to enhance or protect wetlands.

After Federal expenditures and financial assistance are identified as having direct or indirect effects on the destruction, degradation, protection, or enhancement of wetlands, those programs shall be analyzed as to the environmental and economic impacts, on both a national, regional, and local scale, of eliminating or restricting such expenditures and, conversely, as to the impact of failure to restrict such expenditures or assistance. Meaningful decisions concerning the curtailment or modification of Federal programs cannot be made until the effects of such change are identified, discussed, and balanced. Coupled with the National Wetlands Inventory and updated "Status and Trends" reports, the analyses of this report should define the causes, impact (both environmental and economic), scope, and characterization of wetlands destruction, degradation, protection, and enhancement.

It is anticipated that the study outlined in this section will culminate in recommendations for the conservation of wetlands resources based on the evaluation and comparison of all of the management alternatives identified during the study, as well as such other alternatives which may be available to State and local governments and to the private sector if sufficient incentives are provided. The recommendations should include such statutory changes as are appropriate, as well as recommendations for regulatory change and administration initiatives.

TITLE V. MISCELLANEOUS PROVISIONS

Section 501—Migratory Bird Treaty Act

Section 501 of this title amends section 6(b) of the Migratory Bird Treaty Act. Section 6(b) makes it a felony to sell, offer for sale, barter, or offer to barter any migratory bird or to take any migratory bird with an intent to do one of these things. Section 501 of S. 740 adds the modifier "knowingly" to this Migratory Bird Treaty Act provision.

The Migratory Bird Treaty Act was amended in 1960 to add felony penalties for taking a migratory bird with intent to sell or offering to sell or selling a migratory bird. The amendment (16 U.S.C. 707(b)) did not require "scienter", or that a person knowingly committed such an act. Because of this, a defendant in the U.S. District Court for the Western District of Michigan successfully challenged a felony complaint on the grounds that because the statue does not require "knowledge", it violates the due process requirements of the Constitution. This decision was upheld by the 6th Circuit Court of Appeals (*U.S.* v. *Wulff,* 758 F.2nd 1121). The effect of this decision is that the felony provisions are meaningless within the 6th Circuit and uncertainty now exists throughout the rest of the country.

By adding the modifier "knowingly" to the statute, this amendment will cure the unintended infirmity. Further, the amendment will require proof that the defendant knew (1) that his actions constituted a taking, sale, barter, or offer to sell or barter, as the case may be and (2) that the item so taken, sold, or bartered was a bird or portion thereof. It is not intended that proof be required that the defendant knew the taking, sale, barter or offer was a violation of the subchapter, nor that he know the particular bird was listed in the various international treaties implemented by this Act. Nothing in this amendment is intended to alter the "strict liability" standard for misdemeanor prosecutions under 16 U.S.C. 707(a), a standard which has been upheld in many Federal court decisions.

HEARINGS

The Subcommittee on Environmental Pollution conducted a hearing on S. 740 on November 18, 1985.

ROLLCALL VOTES

Section 7(b) of rule XXVI of th Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

The bill was ordered reported on August 12, 1986, by a voice vote.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 3, 1986.

Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 740, the Emergency Wetlands Resources Act of 1986.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

EDWARD GRAMLICH
(For Rudolph G. Penner, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 740.

2. Bill title: Emergency Wetlands Resources Act of 1986.

3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, August 12, 1986.

4. Bill purpose: S. 740 would extend through fiscal year 1988 the authorization for appropriations to the migratory bird conservation account. The cumulative ceiling for such appropriations, which are currently treated as advances from the general treasury, would remain unchanged at $200 million. The bill would also amend the Wetlands Loan Act so that funds appropriated to the migratory bird conservation fund would no longer be treated as advances, making repayment of previously appropriated funds unnecessary.

Title II would authorize the Secretary of the Interior to change admission fees at certain units of the National Wildlife Refuge System and to deposit the receipts collected, less 30 percent, into the migratory bird conservation fund. The U.S. Fish and Wildlife Service (USFWS) would also be authorized to sell Golden Eagle Passports, the receipts from which would be treated in the same manner as admission fees. Monies not deposited into the account could be used by the agency for collection costs and routine operating expenses at refuges. Section 202 of the bill would raise the price of duck stamps to $10 per year for hunting years 1987 and 1988, to $12.50 per year for hunting years 1989 and 1990, and to $15 per year for each hunting year thereafter. Section 203 would provide for the transfer to the migratory bird conservation fund of amounts equal to revenues collected on firearms and ammunition import duties.

Title III of S. 740 would require the Secretary to establish a national wetlands priority conservation plan. The bill would also remove existing restrictions against the use of sums in the Land and Water Conservation Fund for wetlands acquisition.

Title IV of the bill would direct the USFWS to continue the national wetlands inventory project and submit a report to the Congress regarding wetlands losses in the United States.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1987	1988	1989	1990	1991
Direct spending impact—Titles I and II: [1]					
Estimated revenues	2	3	6	7	7
Estimated net budget authority [2]	25	26	29	30	30
Estimated outlays [2]	24	26	29	30	30
Impact on program subject to appropriations—Title I:					
Authorization level	11				
Estimated outlays	10	1			
Total budget impact: Estimated increase to the deficit	32	24	23	23	23

[1] Title II would increase direct spending authority by increasing amounts credited to the migratory bird fund. The effect of title I is to enable the USFWS to use all of these new revenues (as well as those earned under current law) for the migratory bird program rather than using most of them to replay earlier advances.

[2] These amounts are net of offseting receipts of $8 million a year.

Note: The costs of this bill fall within budget function 300.

Basis of Estimate

Title I of the bill would amend the Wetlands Loan Act by deleting the provision in current law that treats the appropriation of up to $200 million to the migratory bird conservation fund from the general fund as advances. To date, appropriations to the fund total approximately $189 million. Under current law, repayments composed of 75 percent of each year's duck stamp revenues would begin after the expiration of the Wetlands Loan Act on September 30, 1986. By forgiving the repayment of $189 million in previously appropriated advances, this bill would enable the USFWS to spend duck stamp revenues that would otherwise be earmarked for repayment to the Treasury. The net effect of this provision, at current duck stamp prices, is an increase in direct spending authority of $10.9 million each year beginning in fiscal year 1987. In addition, Title I would extend for two more years the period under which the remaining $11 million could be appropriated. For purposes of this estimate, CBO has assumed that the entire remaining amount would be appropriated for fiscal year 1987.

Based on information provided by the USFWS, it is estimated that the charging of admission fees and the sale of Golden Eagle Passports at designated wildlife refuges would produce offsetting receipts as well as new direct spending authority of approximately $8 million per year. All of this amount (including amounts to be available for refuge operations) is direct spending. It is estimated that the proposed increases in duck stamp prices would produce additional revenues totaling approximately $5 million over fiscal years 1987 through 1988, $13 million over fiscal years 1989 through 1990, and $7 million in fiscal year 1991 and each year thereafter.

The transfer to the fund of sums equal to the amounts collected on existing duties of firearm and ammunition imports would create new direct spending authority of an estimated $12 million a year beginning in fiscal year 1987. These funds are currently deposited in the general fund of the U.S. Treasury.

Outlays on spending from the migratory bird conservation fund and from the portion of the new offsetting receipts earmarked for USFWS operations have been estimated on the basis of historical patterns.

No authorization level and outlays have been estimated for activities mandated by Titles III and IV, because these activities are already being carried out under existing authority and are not expected to involve additional resources.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: On May 30, 1986, CBO prepared a cost estimate for a related bill, H.R. 4531, as ordered reported by the House Committee on Merchant Marine and Fisheries. The cost estimates reflect the differences between the bills.

9. Estimate prepared by: Deb Reis.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

DEPARTMENTAL REPORT

The Committee on Environment and Public Works received the following Departmental Report:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, April 23, 1986.

Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 740, the proposed "Emergency Wetlands Resources Act of 1985."

We recommend enactment of S. 740 if it is amended to address the concerns discussed below.

This Administration is dedicated to the conservation of America's wetland resources and we have searched for new solutions. In March 1983, we transmitted to Congress the "Protect Our Wetlands and Duck Resources Act" (POWDR) with the hope that it would focus widespread public attention on the loss of wetlands. We are pleased that it started a dialogue that resulted in S. 1329 in the last Congress and S. 740 this Congress. The provisions of S. 740 are similar to those of S. 1329, which was supported in large part by the Administration. To maintain this important focus on wetlands conservation, we would continue to support enactment of comprehensive wetlands legislation, such as S. 740, if it is amended to address our concerns.

America is facing critical financial challenges that require us to make hard choices among many worthwhile progams throughout the Federal Government. With respect to wetlands, we face the need to balance this important program with other programs vital to the Nation's well-being. We will continue our efforts using the migratory conservation fund (MBCF). We are also continuing or initiating programs that will lead to a more consistent Federal policy for wetlands conservation. However, to combat the growing deficit, funding for Federal acquisition must remain at constrained levels. Accordingly, we recommend amendment of S. 740 to allow us the flexibility to request such funds when the Federal budget climate improves. In addition, we have concluded that fiscal conditions preclude the use of Federal grants for wetlands conservation programs at this time.

In sum the Administration's position on S. 740 is as follows:

(1) We support the concept of authorizing Federal wetlands acquisition by direct appropriation from the Land and Water Conservation Fund (LWCF), in such amounts as may be necessary. However, use of this authority would be constrained by budgetary concerns.

(2) We support the increase in the price of the duck stamp with the proceeds to be used for acquisition of new migratory waterfowl habitat and would continue to use them for acquisition.

(3) We support the extension of the authorization of the Wetlands Loan Act and do not object to forgiveness of advances under the Act.

(4) We support the concept of new wildlife refuge entrance fees but propose that the receipts be used for refuge management as well as land acquisition.

(5) We oppose the establishment of a new Wetlands Conservation Fund.

(6) We oppose the establishment of a new State grant program for wetlands acquisition, but support amendments to the LWCF Act to require State comprehensive outdoor recreation plans to address wetlands and to qualify wetlands as replacement lands for conversions.

(7) We oppose earmaking any specific amounts from the LWCF for wetlands acquisition.

(8) We oppose the transfer of import duties on arms and ammunition to the MBCF.

(9) We believe the new study and inventory authorizations and requirements are unnecessary, but would not object to these provisions if they are amended to reflect currently scheduled completion dates and to remove new appropriations authorizations.

We have enclosed amendments to S. 740 that would make it consistent with our position.

BACKGROUND

Less than half of the wetlands acreage that once existed in the lower 48 States still remains. From the 1950's to the 1970's, the coterminous States suffered a net loss of 9 million wetland acres. The most extensive wetlands losses during this period occurred in Louisiana, Mississippi, Arkansas, North Carolina, North Dakota, South Dakota, Nebraska, Florida and Texas. Moreover, according to our estimates, we are continuing to lose wetlands at the *annual* pace of nearly one-half million acres, an area approximately 12 times that of the District of Columbia.

It is also well established that the loss of wetlands is one of the most serious environmental problems facing the Nation today, with far-reaching implications not only for fish and wildlife resources but also for outdoor recreation, business, agriculture, and flood control. For example, mallards have declined by 20 percent since the mid-1950's. While we do not understand all of the causes of this type of population decline, it has occurred at a period during which we have observed accelerated wetland losses. In many areas, additional wetland losses could easily result in further declines in waterfowl populations. These statistics on wetlands losses also translate into losses of all the natural resources and the varied recreation and economic benefits wetlands provide, including major contributions to commercial and recreational fishery harvests and the Nation's fur harvest. They provide habitat for other wildlife, including many endangered and threatened species. They make recreational opportunities possible for millions of Americans, provide savings in flood and erosion control, and help to supply the Nation's increasing demand for safe, pure water.

The Administration continues to support conservation of wetlands through many programs and actions. In addition to ongoing acquisition efforts, we have worked with the private sector and the Nature Conservancy to encourage donations of wetlands, such as the 120,000 acres of predominantly wetland habitat at Alligator River in North Carolina recently obtained from the Prudential Insurance Company. Also, Ducks Unlimited, Inc., has donated over $1.4 million to the MBCF to be used to acquire waterfowl habitat for the National Wildlife Refuge System. In another example, the Fish and Wildlife Service, the Bureau of Land Management (BLM) and U.S. Forest Service have recently entered into a memorandum of understanding with Ducks Unlimited to enhance wetland habitat on refuges and BLM and Forest Service lands. Ducks Unlimited has pledged 10 percent of its revenues for this purpose to enhance waterfowl production in the United States, particularly North and South Dakota, Minnesota, Montana and Alaska.

MIGRATORY BIRD CONSERVATION FUND

The MBCF provides funding for the acquisition of habitat important for migratory bird resources, particularly waterfowl. Waterfowl hunters have traditionally borne the principal cost of this acquisition program through their purchases of annual migratory bird hunting and conservation stamps (duck stamps). We are extremely proud of this alliance, which is unique to refuges. During 1984, which marked the 50th anniversary of the duck stamp program, we embarked on an intensive effort to encourage more nonhunter participation in the purchase of these stamps. We will continue our efforts to increase voluntary contributions by asking others to join in this partnership for conservation.

Since 1934, waterfowl hunters and other conservationists who have purchased these stamps have contributed about $300 million to the fund toward the acquisition of 3.66 million acres of migratory bird habitat for the National Wildlife Refuge System. In recent years, receipts to the fund have ranged from $13.7 to $16.6 million annually. For fiscal year 1986, $13.7 million is available from the fund for the acquistion of migratory bird habitat. Section 202 of S. 740 would incrementally raise the price of the duck stamp from its current $7.50 price to $15.00 over a 5-year period. We believe this is a positive initiative that will increase revenues for the purchase of essential wetlands for migratory birds. Assuming an increase in the price of the stamp to $10, the FY 87 budget anticipates that $16.5 million would be available.

Section 201 would authorize the Secretary to require a permit for entrance into certain designated units of the refuge system. Individual and group visit permits would be available. A valid duck stamp or Golden Eagle Passport would also provide entrance to designated units and free entry would be provided to blind or disabled persons and to persons aged 62 or over. The proceeds of the sale of permits would be placed in the MBCF for the acquisition of migratory bird habitat. In addition, the bill would allow use of up to 10 percent of the proceeds from the sale of entrance permits to defray the cost of collection and other related costs.

We support the provisions of S. 740 authorizing an entrance fee at units of the National Wildlife Refuge System, but recommend that they be amended to:

(1) Specify the criteria to be used in designating units where fees will be required.

(2) Direct that 40 percent of the funds be paid into the MBCF, 40 percent be available for the Secretary for refuge operation and maintenance costs, and 20 percent be deposited into the general fund of the U.S. Treasury.

As noted earlier, the Nation is experiencing a continuing high rate of wetland losses. Regrettably, budget constraints limit the amount of protection that can be afforded these unique areas through acquisition. Reduced budgets also limit activities in the area of operation and maintenance of wildlife refuges. The Administration believes it is imperative to address this need and therefore proposes the dedication of entrance fees receipts to refuge operation and maintenance as well as land acquisition.

Section 203 of S. 740 would provide for the transfer of import duties on arms and ammunition to the MBCF for use in wetlands acquisition. The Administration opposes this provision, which would result in an immediate reduction of general fund revenues deposited in the U.S. Treasury, thereby increasing the deficit. These receipts are not user fees and they should remain in the Treasury. We do not believe it would be fiscally prudent to earmark these substantial additional sums for Federal wetlands acquisition. We believe that the additional revenues that would be provided to the MBCF through refuge entrance fees and increased duck stamp revenues constitute a significant increase in the level of assured funding for these acquisition efforts. We also believe Federal wetlands acquisition efforts must be pursued in the context of other pressing national needs.

In addition, section 101 of S. 740 would extend the authorization of appropriations under the Wetlands Loan Act and eliminate provisions for repayment of advances to the MBCF appropriated under the Act. These appropriations have supplemented duck stamp sales to finance Federal acquisition of migratory bird habitat. The Wetlands Loan Act will expire September 30, 1986, and 75 percent of the monies from the sale of duck stamps would then have to be used, not to protect additional waterfowl habitat, but to retire the loan advances. We support extension of the Act and have no objection to forgiveness of these advances. Forgiveness of the loan advances will assure the purchasers of duck stamps that their contributions will continue to be used for the conservation of migratory bird habitat.

LAND AND WATER CONSERVATION FUND

The migratory bird acquisition program is a very important effort. However, this program is aimed at protection of only one wetland-related resource, albeit a critical one. It has become clear that wetlands should not just be of concern to waterfowl hunters and refuge visitors. As noted above, wetlands provide recreational benefits directly to millions of Americans and natural resources that touch virtually all of our lives. S. 740 recognizes this country's great stake in wetlands conservation by authorizing increased use of the LWCF by eliminating the barrier that is sometimes drawn between wetlands and other LWCF programs. S. 740 would also transfer $75 million annually from the LWCF to a Wetlands Conservation Fund and authorize its use for grants to States for wetlands conservation and Federal wetlands acquisition for a period of 10 years.

With regard to Federal acquisition, the bill would eliminate the prohibition on use of the LWCF for acquisition of areas authorized by the Migratory Bird Conservation Act, and provide us separate authority to acquire wetlands habitat guided by a wetlands priority conservation plan developed by the Secretary in consultation with the States. By weighing the loss of specific wetland types, as well as a wide range of their natural resource benefits, this program would be a balanced addition to our efforts to preserve wetland wildlife habitat and related recreational opportunities in the future.

We continue to endorse use of the LWCF for Federal wetlands acquisition and are pleased that S. 740 would implement this program through the annual budget process. However, we do not recommend the authorization of a specific funding level. From FY 1981 through FY 1985, approximately $166 million has been obligated by the Service from the LWCF to acquire, through donation, purchase, or exchange, approximately 298,300 acres of valuable wildlife habitat, and for FY 1986, $71.1 million is currently available to continue these acquisitions. Given these accomplishments and because of the large Federal deficit, the FY 1987 budget includes $1.5 million to continue ongoing LWCF acquisitions with carryover funds and an exchange program. The authorization of such sums as may be necessary for Federal wetlands acquisition through the LWCF would provide us the flexibility to request appropriations for these programs again when budgetary considerations permit. We also believe the provision to establish a Wetlands Conservation Fund is unnecessary and should be deleted.

In addition, under S. 740, grants would be available to pay 75 percent of State wetlands conservation projects, including acquisition, preservation and enhancement. Half of the money would be apportioned on the basis of State expenditures for wetlands conservation in the most recent year of record, compared to other States. The other half would be disbursed by the Secretary for priority State projects in accordance with a wetlands priority conservation plan. Although we recognize that this is a concept endorsed by the

Administration in the past, we cannot support a new State grant program at this time in light of the Federal budget deficit.

We believe that a more effective approach would be to amend the LWCF Act to emphasize the use of LWCF State grants for wetlands acquisition and to qualify wetlands under the conversion provision of the LWCF Act. Although wetlands have been eligible for acquisition by the States with those grants, few have been acquired. We believe that wetlands are unique in that they provide recreation benefits as well as environmental and other societal benefits and therefore should be given attention by the States. We also believe that the States should be given the option of acquiring wetlands as replacements for LWCF-acquired or developed lands that are to be converted to other uses. This would increase the possibility of new wetland protection without imposing any new obligations on the States or the Federal Government.

WETLANDS INVENTORY, TREND ANALYSIS AND LOSS REPORT

Government acquisition alone cannot preserve all of the important wetlands. Of the approximately 95 million acres of wetlands remaining in the lower 48 States, 87 million acres are privately owned. We must examine other means of protecting wetlands as alternatives to Federal acquisition and management. The Fish and Wildlife Service currently has underway several programs to identify wetlands and analyze means of protecting them.

First, with the National Wetlands Inventory now in progress under existing authority, the Service is using high-altitude photography and photo interpretation to develop large-scale maps showing the location, shape and characteristics of priority wetlands and deepwater habitats. This includes the coastal zone, prairie wetlands, playas and the floodplains of major rivers. By the end of this fiscal year, the National Wetlands Inventory will have produced wetlands maps for 45.5 percent of the lower 48 States and 12 percent of Alaska. Inventories have been completed for 8 States and mapping is currently underway in 39 more. The wetlands inventory, and its various products, will help government agencies and the private sector, early in their planning processes, to make informed decisions about the effects of their actions on wetland resources.

In FY 1985 the Administration requested a $1.5 million increase over FY 1984 funding levels to continue and improve the inventory. To emphasize the importance of this wetland mapping effort, this increased funding level is requested to be continued in FY 1987. By 1988, about 55 percent of the contiguous U.S. and 16 percent of Alaska will be inventoried. This encompasses all of the Service's top priority areas in the lower 48 States and half of those in Alaska.

Second, the Service published a scientific report in April 1983 discussing the status and trends of wetlands and deepwater habitats in the conterminous U.S. from the 1950's to the 1970's and the possible causes for losses and gains. A popular report designed to inform policy makers, private industry and the general public on the current status and historical trends of wetlands gains and losses in the U.S. was published in March 1984. Depending upon the availability of suitable aerial photography, we plan to update our trend analysis to cover the mid-1970's to the mid-1980's, with work beginning in 1989 and a final report produced in 1990.

Third, the Service is preparing a special report, covering two geographical areas, to review Federal programs and estimate the extent to which those programs contribute to wetland conversion and degradation. The areas selected as the focus for this examination are the bottomland hardwood forest habitat of the lower Mississippi alluvial plain and the prairie pothole region of the upper Midwest. However, the programs that will be studied are national in extent and the results will have national implications. The results will be used to develop a report to Congress, to be transmitted by the Secretary together with recommendations on establishing a more consistent Federal role with regard to wetlands.

Title IV of S. 740 would provide for the continuation and completion of the National Wetlands Inventory, an updated status and trends report on wetlands losses every 10 years, and a report examining the role Federal programs play in wetlands destruction. We welcome the Congressional interest in our efforts that is indicated by these provisions of the bill. However, as evidenced by our ongoing activities, we believe sufficient statutory authority already exists to undertake these programs. Accordingly, we recommend that the dates be amended to reflect our current schedule and that the appropriations authority be deleted.

In summary, the loss of our Nation's wetlands is an extremely serious problem. The Administration and Congress have both taken significant steps toward realizing a successful wetlands conservation program. At the same time, we are met with a huge budgetary problem that we must deal with now. We hope to continue working closely with the Congress towards the final enactment of fiscally prudent comprehensive wetlands conservation legislation during this session.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

WILLIAM P. HORN,
Assistant Secretary.

Enclosure.

RECOMMENDED DEPARTMENT OF THE INTERIOR AMENDMENTS TO S. 740

Page 1, line 4, strike out "1985" and insert in lieu thereof "1986".

Page 4, line 9, insert "help" after "to".

Page 6, line 4, insert "REFUGE OPERATIONS AND THE" after "FOR".

Page 6, line 6, strike out "ADMISSION" and insert in lieu thereof "ENTRANCE".

Page 6, strike out line 7 and all that follows through line 25 and insert in lieu thereof the following:

> SEC. 201. (a) Notwithstanding the provisions of any other law, in order to provide additional revenues for the conservation of the Nation's wetland resources and for operation and maintenance of refuges, entrance fees may be charged

at certain units of the National Wildlife Refuge System designated by the Secretary of the Interior for collection of such fees and receipts therefrom shall be expended or deposited as provided in subsection (c)(3) of this section. A designated unit shall be one for which the Secreatary finds that—

(1) the level of visitation for recreation purposes is high enough to make collection of entrance fees economically justifiable;

(2) there is a practical mechanism for implementing and conducting an entrance fees program; and

(3) imposition of a fee is not likely to result in undue economic hardship for a significant portion of refuge visitors.

(b) A valid Golden Eagle Passport or a valid Golden Age Passport, as established under the Land and Water Conservation Fund Act of 1965 (78 Stat. 897; 16 U.S.C. 4601-4 et seq.), shall function as a permit for entry into any designated unit and shall be available for purchase at all designated units.

Page 7, lines 3, 8, and 15, strike out "admission" each place it appears and insert in lieu thereof "entrance".

Page 7, strike out line 18 and and all that follows through page 8, line 3, and insert in lieu thereof the following:

(3) Notwithstanding the provisions of any other law and without further appropriation, receipts collected from fees or permits referred to in section 201 of this Act for entrance to units of the National Wildlife Refuge System and from fees collected at any unit of the National Wildlife Refuge System under subsections (b) and (c) of section 4 of the Land and Water Conservation Fund of 1965, as amended, shall be distributed—

(A) forty percent to be available until expended by the Secretary of the Interior, first to defray the cost of collection, second for operation and maintenance of the collecting Unit, and third for operation and maintenance of all units within the National Wildlife Refuge System;

(B) forty percent to be deposited into the migratory bird conservation fund established under section 4 of the Act of March 16, 1934 (48 STAT. 451; 16 U.S.C. 718d), as amended; and

(C) twenty percent to be deposited into the general fund of the U.S. Treasury.

Page 8, line 12, strike out "admission" and insert in lieu thereof "entrance".

Page 8, strike out line 22 and all that follows though page 9, line 2. Redesignate the following subsections accordingly.

Page 9, line 3, strike out "admission" and insert in lieu thereof "entrance".

Page 9, line 14 and 15, strike out "and shall be available for purchase at any designated unit".

Page 10, strike out line 5 and all that follows through line 16 and insert in lieu thereof the following new subsection:

> (i) When authorized by the Director of the U.S. Fish and Wildlife Service, volunteers may sell permits and collect fees authorized or established pursuant to this Act or other authority, and funds appropriated or otherwise available to the Service shall be available to cover the cost of any surety bond as may be required of any such volunteer in performing such authorized services under this subsection.

Page 10, line 25, add at the end thereof the following new sentence: "Such section is further amended by inserting 'available for obligation and' immediately before 'attributable'."

Page 11, strike out line 2 and all that follows through page 12, line 18.

Page 12, strike out lines 19 and 20 and insert in lieu thereof "TITLE III—STATE AND FEDERAL WETLANDS ACQUISITION".

Page 12, strike out line 21 and all that follows through page 18, line 9.

Page 18, line 10, strike out "302" and insert in lieu thereof "301".

Page 18, line 16, insert "and interests therein" after "wetlands".

Page 18, line 17, insert "Federal and State" after "to" and strike out "and" and all that follows through "Act" on line 22.

Page 19, line 1, strike out "or" and insert in lieu thereof "and the".

Page 19, line 4, insert ", among other things," after "to".

Page 19, line 8, strike out "and".

Page 19, line 10, strike out the period and insert in lieu thereof ", and" and insert immediately below line 10 the following:

> (D) outdoor recreation.
>
> SEC. 302. Section 7(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9(a)(1) is amended by striking out "except migratory waterfowl areas which are authorized to be acquired by the Migratory Bird Conservation Act of 1929, as amended".
>
> SEC. 303. Section 6 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-8) is amended—
>
> (1) in subsection (d), by adding at the end thereof the following new paragraph:
>
> "For fiscal year 1987 and thereafter each comprehensive statewide outdoor recreation plan shall specifically address wetlands with the State as an important outdoor recreation resource as a prerequisite to approval, except that a revised comprehensive statewide outdoor recreation plan shall not be required by the Secretary, if a State submits, and the Secretary, acting through the Director of the National Park Service, approves, as a part of and as an addendum to the existing comprehensive statewide outdoor recreation plan, a State wetlands priority plan consistent with the national wetlands priority conservation plan de-

veloped under section 301 of the Emergency Wetlands Resources Act or, if such national plan has not been completed, consistent with the provisions of that section.";

(2) in subsection (e)(1), by inserting, in the first sentence thereof, after "For the acquisition of land, waters, or interests in land or waters" the following: ", or wetland areas and interests therein as identified in the wetlands provisions of the comprehensive plan"; and

(3) in subsection (f)(3), by adding at the end thereof the following: ": *Provided,* That wetland areas and interests therein as identified in the wetlands provisions of the comprehensive plan and proposed to be acquired by a State, or political subdivision thereof, as suitable replacement property within that same State that is otherwise acceptable to the Secretary, acting through the Director of the National Park Service, shall be considered to be of reasonably equivalent usefulness with the property proposed for conversion and shall be eligible without regard to location".

SEC. 304. The Secretary is authorized to carry out Federal acquisitions that are consistent with the wetlands priority conservation plan established under section 301 of this Act: *Provided,* That for fiscal years 1987 and 1988 the Secretary shall carry out Federal wetlands acquisitions as directed in applicable appropriations Acts.

Page 19, line 13, strike out "(a)".

Page 19, line 22, strike out "1990" and insert in lieu thereof "1998".

Page 20, line 1, insert "thereafter" after "practicable".

Page 20, line 4, strike out "1986" and insert in lieu thereof "1990".

Page 20, strike out line 10 and all that follows through line 23.

Page 21, strike out line 2 and all that follows through line 4 and insert in lieu thereof the following:

SEC. 402. (a) The Secretary shall prepare and submit to the Committees—

(1) by March 30, 1987, a report regarding wetland losses in the lower Mississippi alluvial plain and the prairie pothole regions of the United States; and

(2) by September 30, 1987, a report regarding wetland losses in all other areas of the United States.

Page 21, line 5, strike out "report" and insert in lieu thereof "reports".

Page 21, line 10, strike out "expenditures and" and insert in lieu thereof "expenditures,".

Page 21, line 11, insert "and tax provisions" after "assistance".

Page 22, line 1, strike out "and fiscal".

Page 22, lines 2 and 3, strike out "expenditures and" and insert in lieu thereof "expenditures,".

Page 22, line 3, insert "and tax provisions" after "assistance".

Page 22, line 15, insert "and" after "Agriculture;".

Page 22, line 15, strike out "and" and all that follows through "1221);" on line 21.

Page 23, strike out line 3 and all that follows through line 5.

REGULATORY IMPACT

Section 11(b) of rule XXVI of the Standing Rules of the Senate requires the Committee to evaluate the regulatory impact of the reported bill.

It is not anticipated that this bill will impose any significant new regulatory burden.

CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary to dispense with the requirements of subsection (12) of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

○